

STATE WATER RESOURCES CONTROL BOARD

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WATER RIGHTS HEARING ON APPLICATION 30532
FILED BY THE MONTEREY COUNTY WATER RESOURCES AGENCY
NACIMIENTO RIVER, SAN LUIS OBISPO COUNTY

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HELD AT

BONDERSON BUILDING
901 P STREET
SACRAMENTO, CALIFORNIA

MONDAY, JULY 24, 2000
9:00 A.M.

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Reported by:

ESTHER F. WIATRE
CSR NO. 1564

CAPITOL REPORTERS (916) 923-5447

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SACRAMENTO, CALIFORNIA

MONDAY, JULY 24, 2000, 9:00 A.M.

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H.O. BROWN: Come to order.

Good morning, ladies and gentlemen.

This is the continuation of the water right Application 30532, Monterey County Water Resources Agency, Nacimiento, San Luis Obispo County.

Ms. Katz, you had some words for us the first thing?

MS. KATZ: Yes. In the discussion about the staff exhibits being offered into evidence I neglected to offer the Notice of Hearing for this matter. So I would ask that the Notice of Hearing be accepted into evidence.

H.O. BROWN: Thank you, Ms. Katz.

Any objections to that?

MS. KATZ: That would be Exhibit 2C, Staff Exhibit 2C

H.O. BROWN: Seeing no objections, they are so ordered.

On the motion to strike, let's discuss that first thing.

Mr. Maloney, you sent the copies of the motions to all the parties and they have all receipt of it?

MR. MALONEY: Yes, your Honor.

H.O. BROWN: Let's discuss that.

Mr. O'Brien.

1 MR. O'BRIEN: Mr. Brown, I believe that Mr. Donlan has
2 a proposal with respect to the motion to strike. It might
3 work faster to hear from him first.

4 H.O. BROWN: Mr. Donlan.

5 MR. DONLAN: Thank you, Mr. Brown, and good morning.

6 Tanimura & Antle has agreed to withdraw its testimony,
7 all of the testimony, the written testimony of Mr.
8 Scalmanini related to seawater intrusion and the Salinas
9 Valley Water Project. It was unclear to me at the end of
10 the hearing on Tuesday whether or not Tanimura & Antle
11 Exhibit 1 had been moved into the record, subject to the
12 motion to strike, or whether it was being held kind of in
13 abeyance awaiting answer pending that motion.

14 What we have done is prepare a what we call Tanimura &
15 Antle Exhibit 1A which is a redacted version of Mr.
16 Scalmanini's testimony that eliminates those references. I
17 can read into the record the specific references that we
18 have stricken or modified if you would like.

19 With respect to the rest of Mr. Maloney's motion or
20 Salinas Valley Protestants' motion, Tanimura & Antle opposes
21 that. We believe Mr. Scalmanini's testimony is highly
22 relevant to the issue of harm which is a key issue, hearing
23 issue No. 2. As set forth in the letter of May 24th, the
24 hearing notice, I am sorry, key hearing issue Number 2
25 states:

1 Has the additional diversion to storage which
2 would be authorized by the approval of
3 Applicaiton 30532 caused injury to persons
4 with senior water rights downstream of
5 Nacimientto Reservoir. (Reading.)

6 Mr. Scalmanini's testimony goes right to the heart of
7 this issue. His testimony shows that if injury to Salinas
8 Valley Protestants' water rights has occurred as result of
9 operation of Nacimientto Reservoir, including the quantity
10 sought under Application 30532, one would have expected to
11 see an impact on water supply, either through declining
12 groundwater levels or through some reduction in stream flow
13 which provides recharge to groundwater via the Salinas River
14 channel. In the extreme, if groundwater supplies in the
15 Upper Valley and Forebay have been adversely impacted or
16 injured, one might have expected to see a reduction in the
17 irrigated acreage in the southern part of the Salinas Valley
18 since the Salinas Valley Protestants' exclusive water source
19 is pumped groundwater.

20 For that reason we oppose the motion to strike. We do
21 agree that Mr. Maloney should be entitled to cross-examine
22 on issues relevant to Mr. Scalmanini's testimony which goes
23 to the historical land use water levels in the Upper Valley
24 and Forebay areas immediately preceding and since the
25 construction of Nacimientto Reservoir. That is what Mr.

1 Scalmanini testified to. We would be willing to put Mr.
2 Scalmanini back on the stand for cross-examination of
3 matters relevant to that question.

4 H.O. BROWN: Keep this so it doesn't get too
5 confusing. We are in receipt of Mr. Maloney's request to
6 strike certain portions of the direct written testimony.
7 And you are in receipt of that also, I presume?

8 MR. DONLAN: Mr. Maloney requested to strike all of the
9 written testimony and all of Tanimura & Antle's exhibits.

10 H.O. BROWN: No, that is not what we have. We have
11 very specific --

12 MR. MALONEY: Can Mr. Virsik speak to the motion?

13 MR. VIRSIK: I can speak on the motion itself. I am
14 going to agree with Mr. Donlan, to agree is that there are
15 three portions to the motion. The first is to the Salinas
16 Valley Water Project, which I have not seen. It is proposed
17 Exhibit 1A. That may or may not dispose of the matters as
18 to the Salinas Valley Water Project and seawater intrusion.
19 I don't know, but it may.

20 H.O. BROWN: Wait a minute.

21 Ms. Katz, I have the information and receipt relative
22 to the direct testimony of certain paragraphs and sentences
23 to be stricken.

24 MS. KATZ: Correct.

25 H.O. BROWN: Let's talk on that and this one piece at a

1 time.

2 MR. VIRSIK: Very well.

3 H.O. BROWN: Ms. Katz.

4 MS. KATZ: Mr. Donlan has just brought in what Tanimura
5 & Antle would be willing to strike, which includes this
6 Tanimura & Antle Exhibit 1A, which is a modified version,
7 modified version of Mr. Scalmanini's testimony, written
8 testimony, based on striking certain parts of it. Since not
9 everyone, including you, Mr. Brown, have seen this, I might
10 offer a suggestion that Mr. Virsik and Mr. Maloney and Mr.
11 Donlan get together at the break so that they can decide
12 what they agree on and what they don't agree on and then we
13 could come back to this.

14 H.O. BROWN: We have the written direct testimony of
15 Mr. Scalmanini. We have the oral testimony from Mr.
16 Scalmanini. We have some figures as it relates to the
17 Salinas Valley Water Project that are in question, and then
18 we have some exhibits.

19 So we have the written, direct, the oral testimony,
20 figures in the Salinas Valley Water Project and exhibits. I
21 would like to know which one of those you gentlemen want to
22 have stricken.

23 MR. VIRSIK: Yes, your Honor. We would like to have
24 stricken the written direct, the oral direct and the
25 exhibits. That is the entire scope of the motion filed.

1 H.O. BROWN: The whole testimony?

2 MR. VIRSIK: Not the cross-examination, your Honor; the
3 testimony, the oral cross-examination.

4 H.O. BROWN: Let's go with the written first. What do
5 you want to have stricken with the written?

6 MR. VIRSIK: It is in two categories. The first
7 category Ms. Katz suggested we review the testimony with
8 respect to the Salinas Valley Water Project. That is one
9 category, Salinas Valley Water Project.

10 The second category is Mr. Scalmanini's, as he termed
11 it, his historical review of the Salinas Valley. Mr. Donlan
12 has spoken just now to some degree on that, saying that he
13 would make Mr. Scalmanini available for cross-examination.

14 That goes to partially --

15 H.O. BROWN: Wait a minute. Let's stop right there.

16 MR. VIRSIK: Yes, sir.

17 H.O. BROWN: We have those portions that I believe Mr.
18 Maloney sent to us that shows that in the written testimony
19 those paragraphs and sentences he wishes to have removed.
20 Has that changed from the information that Mr. Maloney sent
21 to us and the other parties?

22 MR. VIRSIK: No, sir, it has not. But I may point out
23 that in what is on the second page of the written motion,
24 after the bold heading, there are additional -- which I
25 don't know what lists you are or are not looking at. There

1 are additional matters to be stricken.

2 H.O. BROWN: Wait a minute. Let's go with the first
3 one, Ms. Katz. Go with the first list.

4 MS. KATZ: Then I am confused what the motion said.
5 Because there were direct statements in here where the
6 Salinas Valley Protestants moved to strike certain
7 things. And then that is in -- that begins on line -- Page
8 1, it is between Lines 25 and 26 on here. Then in that
9 second heading references to an analysis of historical
10 review of pre- and post-reservoir conditions. I didn't see
11 anything, a specific thing that said we want to
12 strike. There is discussion in here, but it doesn't get --
13 then you moved to Page 3, exhibits -- oh, I missed it. I'm
14 sorry, I apologize. I didn't see move to strike the direct
15 testimony that relates to historical analysis, but it is not
16 specifically identified by page.

17 MR. VIRSIK: In that line that you are looking it is
18 specifically identified by page which for the record is Page
19 3 approximately within lines three and four. And
20 following. Which I believe is the reference Ms. Katz is
21 relying on right now. I also will point out opening
22 sentence of the motion says to file a written motion to
23 describing the direct testimony and exhibits of Joseph
24 Scalmanini and then in the recap on the conclusion the two
25 bases given is one as to the Salinas Valley Water Project

1 because of your Honor's ruling about the scope of the
2 hearing. It was one body of direct testimony and on the
3 second one, which we have not yet spoken about, as to the
4 balance which is the historic, Mr. Scalmanini's historical
5 opinions based on the inability to cross-examine Mr.
6 Scalmanini on Historical Benefits Analysis and objections to
7 that direct line, to that entire line of cross-examination.

8 H.O. BROWN: What I want to have are some very
9 specifics here. You are asking for and what Mr. Donlan is
10 agreeing to. It may be best to set this aside and have you
11 gentlemen get together during lunch and see if you can come
12 up with the specifics of where we can have a clear record as
13 to what is stricken and what is not.

14 So I am going to hold off ruling on this and ask that
15 the parties get together during the break and see if we can
16 resolve this today. If we can, fine. If no, then I will
17 give you this afternoon, this evening, whenever to resolve
18 it and we'll bring it up first thing in the morning.

19 MR. VIRSIK: Would it be in order to bring up several
20 procedural matters with respect to the record as it
21 presently stands which have arisen since our viewing of the
22 webpage of the exhibits that were posted? I wanted to be
23 sure about certain designations and things, I am not trying
24 to be controversial about this at all.

25 H.O. BROWN: Sure.

1 MR. VIRSIK: The webpage admits -- indicates that all
2 the exhibits were admitted. I agree that, in fact, is what
3 has occurred. But I just want to make sure the record
4 reflected that the Salinas Valley Protestants did not object
5 during the course of the hearing because their objections
6 had been stated during the course of the motion to quash,
7 which had predated the hearing, that is their objections to
8 the use of the model for various reasons. We need not go
9 into the cross-examination, the Protestants did not do,
10 because that issue had been -- had come up in context of the
11 motion to quash. We want to clarify we understood that the
12 order that your Honor wrote on July 6th was part of the
13 record according to the webpage. We also want to make sure
14 that the actual, the subpoenas, the response, the briefing
15 and specifically the declarations of Mr. Taghavi and Mr.
16 Melton tht were submitted in connection with the motion to
17 quash are a part of the record. It was not clear to me
18 whether -- it implied that all the briefing that had created
19 the order was a part of the record.

20 If that is not what has occurred, we would like to make
21 sure that it is part of the record of this proceeding.

22 H.O. BROWN: Okay.

23 MR. VIRSIK: If I am clear enough about that, including
24 a letter of clarification we sent on July 7th and a response
25 from Ms. Katz on July 11th as to the motion to quash

1 ruling.

2 H.O. BROWN: All right.

3 Mr. O'Brien, you rise.

4 MR. O'BRIEN: If the request is that the various briefs
5 and documents submitted in connection with the motion to
6 quash be in the record, I have no problem with that.

7 Mr. Virsik started off his statement by saying that his
8 concern was with the question of whether our evidence had
9 come in over his objection. There wasn't objection. I want
10 the record to be clear there wasn't any objection, and to
11 the extent he is waiving the objection, the record says what
12 the record says. I am not going to agree that he can go
13 back and fix that.

14 H.O. BROWN: Thank you, Mr. O'Brien.

15 MR. VIRSIK: One other hopefully even shorter matter.
16 The same rationale, the rulings that your Honor orally
17 delivered at the start of this proceeding, I am also
18 assuming that the briefings, the letters and responses are
19 also a part of this record that generated the series of
20 rulings that we started out with.

21 H.O. BROWN: Any response to that, Ms. Katz?

22 MS. KATZ: I have no objection to putting that in the
23 record. I haven't seen the webpage. I didn't realize that
24 the motion to quash was listed as an exhibit because the
25 staff exhibits were rather narrowly defined. I have no

1 objection.

2 MR. VIRSIK: I just wanted to clarify, the order, the
3 July 6th order, was listed as part of the record on the
4 webpage, if I saw it correctly.

5 H.O. BROWN: We haven't admitted that, have we?

6 MS. KATZ: No, it wasn't.

7 MR. LONG: It hasn't been offered.

8 MS. KATZ: It wasn't offered into evidence.

9 H.O. BROWN: It is not offered into evidence. I
10 suspect we could.

11 Are there any objections to anyone offering that into
12 evidence?

13 MR. O'BRIEN: Mr. Brown, I have no problem with it
14 being part of the administrative record. I am not sure it
15 is technically correct to consider it evidence. I think it
16 ought be in the record.

17 MR. VIRSIK: We are not saying that it is evidence.

18 MS. KATZ: Just part of the administrative record.

19 MR. VIRSIK: Just part of the administrative record.
20 That is what I saw on the webpage. I don't want to say
21 something -- I don't want to be inaccurate about that, but I
22 saw the reference on the webpage, and I wanted to be sure it
23 included for purposes of the administrative record all of
24 the matters that generated the several different rulings
25 that we have been speaking of. And there appears to be no

1 objection to that. So that is not an issue, it appears.

2 H.O. BROWN: No objections, then it is not an issue.

3 MR. VIRSIK: The very last one is the -- we will be
4 putting on our evidence today; that is, the Salinas Valley
5 Protestants. And we propose to do that in kind of blended
6 fashion in that we are the last in order for our case in
7 chief. And we also -- and then there is the rebuttal
8 portion of evidence and testimony. And we propose to do, to
9 blend our case in chief and rebuttal mostly to save time
10 because it is the same body of witnesses, very similar
11 issues. We also do have those witnesses, some of those
12 witnesses and others present pursuant to the Agency's
13 Section 1987 notice today. So we are going to try to get
14 those people through today.

15 And as part of that presentation we have as the Board
16 ordered last week made copies, we have 20 copies, of the
17 various matters that were in protest and other kinds of
18 exhibits we propose to be using today.

19 H.O. BROWN: So I understand, you want to put on your
20 direct and go directly into rebuttal?

21 MR. VIRSIK: Yes. Reserving ability to rebut anything
22 that comes up that is new, not as to the issues that we will
23 rebut. But if there is new evidence submitted -- that would
24 actually be more of a cross or recross technically at that
25 level.

1 H.O. BROWN: There shouldn't be any more evidence
2 submitted at that point. It is rebuttal from there on.

3 MR. VIRSIK: I don't think it is going to be -- we have
4 evidence in rebuttal, among other matters. We just think
5 it would be faster given the order in which we did not know
6 about till last week; it seems to make sense.

7 H.O. BROWN: Mr. O'Brien, do you have any objection to
8 that?

9 MR. O'BRIEN: I do have an objection, very strong
10 objection, to that, Mr. Brown.

11 What is happening here is that the evidence submitted
12 in the direct case in chief by the Protestants, as you know,
13 was extremely bare-bones and did not address the hearing
14 issues in this proceeding, in my opinion.

15 What they are trying to do now is they are trying to go
16 back and fix that. And the way they are trying to do that
17 is to blend new rebuttal evidence, which we haven't seen
18 before, with their direct case in chief. I know one of the
19 rules this Board follows meticulously is the no-surprise
20 rule, which indicates that you are supposed to presubmit
21 evidence responsive to the key issues. You are not supposed
22 to hold back evidence until the last stage of the hearing
23 when no one has a chance to see it in advance and the
24 parties are subjected to the unfair surprise of having to
25 cross-examine on evidence they haven't seen before. That is

1 exactly what is happening here, and I object most
2 strenuously to it.

3 MR. VIRSIK: May I respond?

4 H.O. BROWN: Certainly.

5 MR. VIRSIK: I don't know if the Agency is including in
6 the Protestants' case in chief all the Protestants' exhibits
7 that were submitted previously that would have been made a
8 part of this record under State's Exhibit 2, which the
9 Notice of Hearing informed the Protestants and everyone else
10 that that would, in the normal course of events, be a part
11 of this hearing. And we were, in fact, relying on that
12 evidence which is the bulk of what we will be presented
13 today.

14 That evidence was made available May 5th, 2000. We
15 sent notice of filing all that evidence to all the parties,
16 told them specifically that if they wanted copies they could
17 ask us. This is two and a half months ago. No one ever
18 asked us for a copy of our protest exhibits. As you may
19 recall, they are about five inches thick. That is the vast
20 majority of the material that we will be using today,
21 whether you want to call it a case in chief or call it
22 rebuttal or whatever you desire to, however it is one's
23 desire to term it.

24 In addition to that, everything except one other
25 exhibit that is the specific, instead of merely the

1 references of the protest level, what we have done, as your
2 Honor intimated last week, to go to the Agency and get the
3 recorded documents for ourselves that we were not able to
4 get by Section 1987 notice. Whereas in the protest we may
5 have had a listing of deed and record, we now also have
6 exhibits actually showing the deeds, the maps, the plats,
7 whatever the reference is. It is voluminous. There is no
8 question. But it is almost entirely evidence that was
9 submitted May 5th, 2000, to this Board of which we gave
10 specific notice to all the parties, more parties than are
11 here today. Was a larger list. And the bulk except for one
12 thing is the specifics of those protest level information of
13 which almost everything is in the Agency's possession, i.e.,
14 at the assessor's office or recorder's office of Monterey
15 County.

16 So there is actual surprise, there may be. Is there
17 surprise in the legal sense? No. There has been lots and
18 lots of notice.

19 H.O. BROWN: Mr. O'Brien.

20 MR. O'BRIEN: Mr. Maloney and Mr. Virsik over the two
21 or three years this proceeding has been pending have
22 literally bombarded the Board file and my files with various
23 documents. Until those documents are submitted under oath
24 in the course of this proceeding, they don't constitute
25 evidence. And that seems to be what he is saying. "Oh, we

1 sent all this stuff out. You got this a long time ago. You
2 should have known this was evidence."

3 It is not evidence unless it is submitted as evidence,
4 and it was not submitted as evidence.

5 They want to try to get it in in their rebuttal case,
6 and they can try to. I will object strenuously to it
7 because what I think is going on here, I think in the most
8 candid possible terms, is sandbagging. I will object
9 strenuously to this entire procedure. They should have
10 submitted this in their case in chief.

11 H.O. BROWN: All right. I think enough.

12 Well, Mr. Donlan.

13 MR. DONLAN: If you made a decision on this, I will sit
14 down. If you are still willing --

15 H.O. BROWN: Haven't made it yet. Go ahead.

16 MR. DONLAN: I would like to add to what Mr. O'Brien
17 said, that the May 5th that is referred to was in response
18 to a March 27th letter from Mr. Long or actually Lewis
19 Moller. I did get a copy of that, not from the Protestants,
20 but from the State Water Board. I have reviewed it, and
21 like most of the other evidence that actually has been
22 submitted into the record it does not address the hearing
23 issues.

24 So I submit to you that even with that included in the
25 Board files, they still have not done anything with respect

1 to the harm issue which is Hearing Issue No. 2.

2 (Discussion held off the record.)

3 H.O. BROWN: Ms. Katz, give us our response to this.

4 MS. KATZ: As to all the documents that are in the
5 files, if persons in the proceeding want to rely on those as
6 exhibits and evidence for their own case, they need to
7 identify them specifically and make sure that all the
8 parties have a copy. That is what the prehearing submittal
9 requirements are all about.

10 You cannot assume because someone says they are going
11 to introduce something that it will indeed be offered and/or
12 accepted. But if there is documents you want people to see
13 and that you are relying on, you need to specify that up
14 front.

15 I would agree with Mr. O'Brien. I don't think it is
16 appropriate just to say, "That stuff is in the files.
17 Anybody could have seen it, and that is what we are now
18 relying on." I don't think that is appropriate and that is
19 not how we traditionally conduct business in our
20 administrative hearings, Mr. Brown.

21 H.O. BROWN: Thank you, Ms. Katz.

22 I think enough has been said on that for the time
23 being. We will address that issue when it becomes more at
24 hand. Right now I am leaning towards a clear separation of
25 direct and the rebuttal. We will proceed on that order for

1 the time being.

2 And Clark Colony Water Company, Mr. Bezerra, your
3 direct.

4 MR. BEZERRA: Thank you, Mr. Brown.

5 I think as I've indicated last Tuesday, I would like to
6 present the witnesses of Clark Colony Water Company and the
7 Rosenberg Family Ranch together as a panel. They are
8 consecutive parties. So if I could have Nancy Isakson,
9 Gordon Rosenberg and Vicki Rosenberg come on up to testify,
10 that would be excellent.

11 Before we begin the direct, I would like to make a
12 brief opening statement for Clark Colony Water Company and
13 Rosenberg Family Ranch.

14 Rosenberg Family Ranch and Clark Colony Water Company
15 are not offering any evidence that directly addresses the
16 primary issues before the Board, namely whether or not it is
17 in the public interest to issue a new water rights permit to
18 Monterey County Water Resources Agency for its storage of
19 water to Nacimiento Reservoir. What the Rosenberg Family
20 Ranch and the Clark Colony Water Company are instead
21 concerned with the fact that the primary protestants to the
22 Agency's application, a group of landowners generally known
23 in this hearing as Salinas Valley Protestants have for some
24 time included the water rights of the Rosenberg Family Ranch
25 and Clark Colony among the rights on which their protest is

1 based.

2 This is not just an academic issue. The Rosenbergs had
3 to sue Mr. Rosenberg's sister, Margaret Duflock, to
4 partition the lands that the family had owned for several
5 generations, in part because of the way Ms. Duflock handled
6 the water rights associated with those lands. Having gone
7 through that difficult partition action and successfully
8 separated the lands from those of Ms. Duflock, Mr. Rosenberg
9 was understandably upset to see the water rights of his
10 lands and, in fact, the assessor parcel numbers of those
11 lands included with those of the Salinas Valley
12 Protestants.

13 In addition, as we have heard previously in this
14 hearing, Clark Colony Water Company owns essentially the
15 only viable surface water diversions in the entire Salinas
16 Valley. With the uncertain state of groundwater in the
17 valley, Clark Colony surface rights are especially
18 valuable. The shareholders of Clark Colony were also
19 understandably upset when the Salinas Valley Protestants
20 asserted that pre-1914 claims underlied Clark Colony's
21 valuable surface water rights as a basis for the protest.

22 Testimony my clients will present goes to important
23 issues in this hearing. The simple issue of the
24 Protestants' standing is relevant in this hearing on the
25 water right application. If the Salinas Valley Protestants

1 have the right to introduce evidence that their rights will
2 be injured by the Agency's application, then my clients have
3 the right to introduce evidence that will show that those
4 Protestants do not own all of the water rights on whose
5 behalf they purport to claim injury.

6 Testimony of Rosenberg Family Ranch and Clark Colony,
7 thus, is relevant not to attempt some sort of adjudication
8 of water rights in this proceeding, which we don't want any
9 more than anybody else here, but instead is relevant to the
10 more basic issue of what water rights the Salinas Valley
11 Protestants may rely upon in asserting that the diversion
12 for which the Agency seeks a permit will injure them.

13 Thus, in closing, the Rosenberg Family Ranch and Clark
14 Colony request that this Board disregard the inclusion of
15 their water rights in the documents and exhibits filed by
16 the Salinas Valley Protestants in this hearing and take no
17 action that affects their water right in any way.

18 With that I would like to turn to our direct
19 testimony.

20 H.O. BROWN: All right.

21 Mr. Bezerra, have your witnesses all been sworn?

22 MR. BEZERRA: Yes, they have, Mr. Brown.

23 H.O. BROWN: Mr. Virsik.

24 MR. VIRSIK: Taking Mr. Bezerra's word, we are
25 stipulating that we don't represent -- if you could phrase

1 your question again. If I understood your last statement of
2 your opening, I was about to stipulate to it, if you can
3 read it again to make sure I understood what you just said.

4 H.O. BROWN: Mr. Bezerra.

5 MR. BEZERRA: Our testimony goes to the point that not
6 only do Mr. Maloney and his office not represent these
7 parties, but that they have no right to include these
8 parties' water rights in with the Protestants' water
9 rights. That has consistently been the problem. I
10 understand that Mr. Maloney is willing to stipulate he
11 doesn't represent these parties, that is not the core
12 problem. The core problem is that these people's water
13 rights continue to turn up among the Salinas Valley
14 Protestants.

15 H.O. BROWN: Perhaps they may stipulate to that, that
16 issue also.

17 MR. BEZERRA: I did note that they sent a letter
18 regarding the Samentos' water rights in which they withdrew
19 any document related to the Salinas Valley Protestants that
20 included the Samentos. That sort of solution could be
21 possible, but, if it is, we need to go through every
22 document that the Salinas Valley Protestants have submitted
23 to strike all of those references. And my clients at this
24 point actually, since we are now at a hearing, would refer
25 to testify and give their side of the story.

1 MR. VIRSIK: The solution Mr. Bezerra proposed, I did
2 propose about a week ago. They could tell us which ones
3 they are talking about, we would strike that.

4 I am perfectly willing to do that still. I am not sure
5 what else -- the Board will end up doing it before or after
6 the testimony, one way or another, as far as our
7 understanding.

8 MR. BEZERRA: Mr. Brown, my clients have sent Mr.
9 Maloney's office any number of letters asking them to stop
10 doing exactly what they have done in this hearing. Rather
11 than trying to negotiate with Mr. Maloney and Mr. Virsik
12 what we should strike in the voluminous documents they
13 submitted to the Board, I think it is simpler simply for my
14 clients to give their testimony and for them to
15 cross-examine as to whatever points they feel are
16 appropriate.

17 H.O. BROWN: I concur with Mr. Bezerra, and proceed.

18 MR. BEZERRA: Thank you, Mr. Brown.

19 ---oOo---

20 DIRECT EXAMINATION OF CLARK COLONY WATER COMPANY &

21 ROSENBERG FAMILY RANCH

22 BY MR. BEZERRA

23 MR. BEZERRA: Mr. Rosenberg, could you please state
24 your full name? And when you speak, you want to pull the
25 mike as close as you can so the Court Reporter makes sure

1 she gets everything.

2 Thank you.

3 MR. ROSENBERG: Gordon Walter Rosenberg.

4 MR. BEZERRA: Thank you.

5 Mrs. Rosenberg, could you please state your full name.

6 MRS. ROSENBERG: Vicki Rosenberg.

7 MR. BEZERRA: Mr. Rosenberg, have you taken the oath in
8 this hearing?

9 MR. ROSENBERG: Yes, I have.

10 MR. BEZERRA: Mrs. Rosenberg, have you taken the oath
11 in this hearing?

12 MRS. ROSENBERG: I have.

13 MR. BEZERRA: Mr. Rosenberg, just so the record is
14 clear, you and Mrs. Rosenberg are married; is that correct?

15 MR. ROSENBERG: Yes, we are.

16 MR. BEZERRA: Mr. Rosenberg, are you involved in the
17 management of the Rosenberg Family Ranch?

18 MR. ROSENBERG: Yes, sir.

19 MR. BEZERRA: Mrs. Rosenberg, are you involved in the
20 management of the Rosenberg Family Ranch?

21 MRS. ROSENBERG: I am.

22 MR. BEZERRA: Mr. Rosenberg, are exhibits Rosenberg 1
23 through Rosenberg 18 your testimony and the exhibits to it?

24 MR. ROSENBERG: Yes, sir.

25 MR. BEZERRA: Thank you.

1 Mr. Brown, I want to mention at this point that the
2 Rosenberg Family Ranch has submitted just the direct
3 testimony of Mr. Rosenberg. Mrs. Rosenberg is here for
4 cross-examination purposes, if anyone would like to ask her
5 questions.

6 H.O. BROWN: All right.

7 MR. BEZERRA: Mr. Rosenberg, how long has the
8 Rosenberg Family Ranch existed as a separate ranch?

9 MR. ROSENBERG: The land parcels, we took possession of
10 our land on December 31st, 1995.

11 MR. BEZERRA: Was the Rosenberg Family Ranch a part of
12 a bigger ranch before that time?

13 MR. ROSENBERG: Yes, it was.

14 MR. BEZERRA: And how exactly did Rosenberg Family
15 Ranch get to separate from the former ranch?

16 MR. ROSENBERG: With a partition action which is
17 included here in our exhibit as the judgment number
18 Rosenberg Number 3.

19 MR. BEZERRA: What were the particulars of the lawsuit
20 that led to that partition judgment, who sued who and what
21 did it concern?

22 MR. ROSENBERG: My sister, Ruthann, and I sued for
23 partition, clean break, and to separate the ranch into
24 separate ownership.

25 MR. BEZERRA: Who did you sue in order to do that?

1 MR. ROSENBERG: Margaret Duflock and her family and
2 another sister that owns some property, owned part of the
3 ranch then.

4 MR. BEZERRA: Is Margaret Duflock your sister?

5 MR. ROSENBERG: Yes.

6 MR. BEZERRA: So the partition judgment in that action,
7 it just didn't divide the property, it made sure different
8 members of your family couldn't interfere with each other's
9 management of their properties, correct?

10 MR. ROSENBERG: That was the whole purpose.

11 MR. MALONEY: Objection. The document speaks for
12 itself. What we are doing here is retrying an extensive
13 case in the Monterey Superior Court that has been filed. I
14 think this evidence is totally irrelevant and all it does,
15 it confuses the record. There is no need to go into this
16 because we have a decree from the Monterey Superior Court.

17 H.O. BROWN: Thank you, Mr. Maloney.

18 Mr. Bezerra, where are you headed with this?

19 MR. BEZERRA: What I want to do is just give
20 background. Just summarizing the written testimony Mr.
21 Rosenberg has submitted and the exhibits to it and just to
22 demonstrate what happened, how the ranches got to be and who
23 has what authority to assert water rights associated with
24 the separate ranches.

25 H.O. BROWN: I fail to see the relevance of this right

1 now.

2 MR. BEZERRA: The relevance is that there used to be
3 one large ranch, that Mr. Rosenberg and Ms. Duflock, among
4 others, owned together. It was separated by a partition
5 judgment. Mr. Maloney represents Ms. Duflock and has
6 continued to include the water rights of Mr. Rosenberg's
7 properties in with his Salinas Valley Protestants. It goes
8 to the issue of what water rights Mr. Maloney can accurately
9 claim injury for.

10 H.O. BROWN: Mr. Maloney.

11 MR. MALONEY: Your Honor, we don't know. We have not
12 tried to make an independent investigation as to what that
13 decree makes. Look at our filings in connection with this
14 protest. We do not know the extent of the water rights. We
15 know there may be an easement. It happens to be that Ms.
16 Duflock owns land south of the Rosenberg land tenants in
17 common with Mr. Rosenberg and there is some -- our
18 understanding of this very complex document from the
19 Superior Court of Monterey County, is there some type of
20 easement. The easement is not defined. And that is only
21 right that we have any interest in protecting. We have no
22 interest in Mr. Rosenberg's rights, and we feel if this
23 continues you're in essence going to be retrying the
24 partition action.

25 We recommend that it stop right now. We are not

1 intending to represent any of Mr. Rosenberg's rights. We
2 repeatedly said that. Our only concern is whatever rights
3 we might have, Ms. Duflock might have under the partition
4 action. That is our only issue. If there are rights under
5 the partition action, then we have a right to assert them.
6 It becomes even more irrelevant when you realize we are
7 looking at the water rights or water entitlements on a
8 gross basis not on an individual parcel basis.

9 H.O. BROWN: Thank you, Mr. Maloney.

10 MR. BEZERRA: May I just add one more thing, Mr. Brown,
11 if not --

12 H.O. BROWN: He has the last word on it. If you do, he
13 gets another shot at it.

14 Do you want to say something more?

15 MR. BEZERRA: Just a little. I understand what Mr.
16 Maloney is saying. If he said that two years ago when they
17 started including Rosenberg Family Ranch properties in with
18 all the Salinas Valley Protestants, and he plans to offer
19 the protest which goes into these things, I think we might
20 not be here today. That has never happened to this point in
21 time, and these people would like the ability to address all
22 the things that he submitted.

23 Thank you.

24 H.O. BROWN: Well, my question is this: Is this the
25 proper forum in which to do that?

1 MR. BEZERRA: I just want to point out that the Notice
2 of Hearing in this proceeding, in fact, includes the
3 Rosenberg Family Ranch as among the Protestants, at Page 2,
4 Footnote 1 of the Notice of Hearing. We just want to
5 indicate we are not Protestants and that they don't have any
6 rights to include us among them.

7 H.O. BROWN: Mr. Maloney.

8 MR. MALONEY: We advised this Board I think two or
9 three years ago of the existence of this settlement
10 agreement, and we have made reference to it. We can't say
11 any more. We apologize that the Board did not -- we
12 apologize to Mr. Rosenberg that the notice went out the way
13 it went out. We advised Ms. Katz of the potential error
14 orally. I am not sure whether we did it in writing or not.
15 What we are trying to get across is we don't know what the
16 easement means. It is all governed by that agreement.

17 H.O. BROWN: Thank you, Mr. Maloney.

18 (Discussion held off the record.)

19 H.O. BROWN: I am going to sustain the objection, at
20 least in part, and ask you, Mr. Bezerra, to have your
21 witnesses very briefly summarize the point that Mr. Maloney
22 and his team is not representing.

23 MR. BEZERRA: Thank you, Mr. Brown.

24 H.O. BROWN: And whether or not they are claiming
25 injury.

1 MR. BEZERRA: Whether or not Mr. and Mrs. Rosenberg are
2 claiming injury?

3 H.O. BROWN: That is correct.

4 MR. MALONEY: Your Honor, so I understand this totally
5 correct, that is injury because of this water rights
6 application; is that correct?

7 H.O. BROWN: That is correct, Mr. Maloney.

8 MR. MALONEY: Thank you.

9 H.O. BROWN: Ms. Katz, anything more?

10 MS. KATZ: I would like to state for the record it has
11 been extremely difficult to figure out who the Salinas
12 Valley Protestants are. And I do sympathize with the
13 Rosenbergs and Clark Colony trying to straighten this out.
14 We have been trying to figure out who you represent, Mr.
15 Maloney. I had to ask you before the hearing about one.

16 You say, "Oh, yeah, well that one should be in the
17 record." I frankly don't know who your clients are and who
18 are claiming injury.

19 MR. MALONEY: May I respond to that?

20 H.O. BROWN: The objection that I just ruled on in part
21 hopefully will clear this matter up with your clients at
22 hand, Mr. Bezerra. Please proceed.

23 MR. BEZERRA: Can I just ask for one clarification of
24 things generally?

25 The Notice of Public Hearing contained the Rosenberg

1 Family Ranch as one of the Salinas Valley Protestants. Last
2 Tuesday morning, Mr. Brown, you read who the State Board
3 understands to be the Salinas Valley Protestants and do not
4 include the Rosenberg Family Ranch in that list.

5 So am I correct in understanding that the Board no
6 longer considers Rosenberg Family Ranch to be one of the
7 Salinas Valley Protestants?

8 H.O. BROWN: That is correct.

9 MR. BEZERRA: Thank you. I appreciate that
10 clarification. I think it is important for the Rosenbergs
11 to understand, in particular.

12 In accordance with Mr. Brown's order there, Mr.
13 Rosenberg, are you claiming the Rosenberg Family Ranch's
14 water rights would be injured by the additional storage in
15 Nacimiento Reservoir, that the Monterey County Water Agency
16 -- excuse me, the Monterey County Water Resources Agency has
17 submitted an application for?

18 MR. ROSENBERG: I came here today because Mr. Maloney
19 and Margaret Duflock continue to claim our name, water
20 rights, supposed easements. It is all listed right here in
21 this judgment and I am not prepared to talk about water
22 rights. It is misrepresentation that I am here for.

23 H.O. BROWN: That is not the question as I understood
24 it. Perhaps you could --

25 MR. BEZERRA: Do you think that the Agency's

1 application for Nacimiento Reservoir will injure Rosenberg
2 Family Ranch's water rights?

3 MR. ROSENBERG: I am not prepared to answer that
4 today.

5 MR. BEZERRA: Is that sufficient, Mr. Brown?

6 I think the point is we are not presenting testimony to
7 try to prove any injury. That is not the point of why we
8 are here.

9 I guess at this point what I'd like to limit this to
10 is:

11 Mr. Rosenberg, exhibit Rosenberg 3, is that an actual
12 copy of the partition judgment in your lawsuit against Ms.
13 Duflock?

14 MR. ROSENBERG: Yes, it is.

15 MR. BEZERRA: Okay. Thank you.

16 Have you ever sent Mr. Maloney any letters asking him
17 to stop including Rosenberg Family Ranch water rights --

18 MR. MALONEY: Objection. Your Honor, beyond the scope
19 of this hearing.

20 H.O. BROWN: I sustained that objection.

21 MR. BEZERRA: Thank you, Mr. Brown.

22 I will move on to Ms. Isakson.

23 MR. MALONEY: Can we cross-examine Mr. Rosenberg?

24 H.O. BROWN: You can cross-examine the panel.

25 MR. BEZERRA: Ms. Isakson, have you taken the oath in

1 this hearing?

2 MS. ISAKSON: Yes, I have.

3 MR. BEZERRA: Is exhibit Clark Colony 1 your testimony?

4 MS. ISAKSON: Yes, it is.

5 MR. BEZERRA: What company do you work with?

6 MS. ISAKSON: I am an independent land use,
7 environmental planning, government affairs consultant. I
8 have my own business.

9 MR. BEZERRA: Have you done work for the Clark Colony
10 Water Company?

11 MS. ISAKSON: Yes, I have.

12 MR. BEZERRA: Have you done a lot of work for the Clark
13 Colony Water Company? Over what period of time?

14 MS. ISAKSON: I have done a lot of work for them over a
15 period of since 1993, past seven years.

16 MR. BEZERRA: In the course of your work, have you
17 reviewed all of the files of Clark Colony Water Company?

18 MS. ISAKSON: Yes, I have.

19 MR. BEZERRA: Are you authorized to appear for that
20 water company in this hearing?

21 MS. ISAKSON: Yes, I am.

22 MR. BEZERRA: Did the records you reviewed include
23 Clark Colony shareholder list?

24 MS. ISAKSON: Yes, they have.

25 MR. BEZERRA: So you have essentially knowledge of all

1 of Clark Colony's operations?

2 MS. ISAKSON: Yes, I do.

3 MR. BEZERRA: Now have you reviewed the basis for Clark
4 Colony water rights in the documents related to water
5 deliveries to its shareholders?

6 MS. ISAKSON: Yes.

7 MR. BEZERRA: Do those shareholders have an interest in
8 receiving water from the Clark Colony Water Company?

9 MS. ISAKSON: Yes, they do.

10 MR. BEZERRA: Do any nonshareholders have a right to
11 receive water from the company?

12 MS. ISAKSON: No, they do not.

13 MR. BEZERRA: Can you tell me shortly why Clark Colony
14 is interested in this hearing.

15 MS. ISAKSON: Because they do not -- they want it clear
16 that Mr. Maloney and his firm is not representing Clark
17 Colony Water Company nor their water rights in any manner.

18 MR. BEZERRA: Okay. Thank you.

19 To your knowledge, are any of the people listed as
20 Salinas Valley Protestants shareholders in Clark Colony
21 Water Company?

22 MS. ISAKSON: No.

23 MR. BEZERRA: I think I will stop at that point.

24 Mr. Brown, Ms. Isakson, Mr. Rosenberg and Mrs.

25 Rosenberg are available for cross-examination at this

1 point.

2 H.O. BROWN: Mr. O'Brien.

3 MR. O'BRIEN: No questions.

4 H.O. BROWN: Mr. Donlan.

5 MR. DONLAN: No questions.

6 H.O. BROWN: Mr. Maloney.

7 ---oOo---

8 CROSS-EXAMINATION OF CLARK COLONY WATER COMPANY &

9 ROSENBERG FAMILY RANCH

10 BY SALINAS VALLEY PROTESTANTS

11 BY MR. VIRSIK

12 MR. VIRSIK: Mr. Rosenberg, just a quick question.

13 Are you diverting surface water on your lands?

14 MR. ROSENBERG: No.

15 MR. VIRSIK: Thank you.

16 Ms. Isakson, could you tell who the shareholers of

17 Clark Colony Water Company are?

18 MS. ISAKSON: Not offhand I couldn't, no.

19 MR. VIRSIK: Can you tell me how many there are?

20 MS. ISAKSON: It would be a guess. I would estimate 75

21 to 80.

22 MR. VIRSIK: Do all the shareholders own land in

23 Monterey County, to your knowledge?

24 MS. ISAKSON: Yes.

25 MR. VIRSIK: Do they all own land within Agency Zone

1 2A, to your knowledge?

2 MS. ISAKSON: I believe so.

3 MR. VIRSIK: Do you know if they all own land within
4 Agency Zone 2?

5 MS. ISAKSON: I am not sure, no.

6 MR. VIRSIK: How many acres are served by the Clark
7 Colony Water Company?

8 MS. ISAKSON: Currently served, I believe there's about
9 2,500 acres.

10 MR. VIRSIK: Are these 2,500 acres contiguous?

11 MS. ISAKSON: Contiguous in what manner?

12 MR. VIRSIK: Are all the 2,500 acres, do they all touch
13 each other?

14 MS. ISAKSON: I don't know.

15 MR. VIRSIK: How much water does Clark Colony Water
16 extract on a yearly basis, if you know?

17 MS. ISAKSON: I could give you an average.

18 MR. VIRSIK: What is that average?

19 MS. ISAKSON: Historical average has been probably
20 about 9,500 to 10,000 acre-feet.

21 MR. VIRSIK: Is the area served by the Clark Colony
22 Water Company within the lands of the Clark Colony Water
23 Company water right?

24 MS. ISAKSON: Yes.

25 MR. VIRSIK: Do the water users within the area served

1 by Clark Colony use groundwater?

2 MS. ISAKSON: I am -- do you mean groundwater as in
3 percolating groundwater via a well?

4 MR. VIRSIK: Sure, let's say percolating groundwater.

5 MS. ISAKSON: I believe some of them do.

6 MR. VIRSIK: Do you know who those are?

7 MS. ISAKSON: No, I don't.

8 MR. VIRSIK: Do you know if any of the lands served by
9 Clark Colony use the underflow of any stream or watercourse
10 that flows through their property?

11 MR. O'BRIEN: I am going to object. This witness, Ms.
12 Isakson, is very knowledgeable about various issues in the
13 Salinas Valley. As you know that is a very complicated
14 issue. She is not qualified to answer that question and it
15 is irrelevant to this proceeding.

16 H.O. BROWN: Mr. Bezerra.

17 MR. BEZERRA: I think Mr. O'Brien is correct. Ms.
18 Isakson has done a lot of work for Clark Colony and she has
19 previewed all the documents I believe, but I don't think
20 that she can accurately testify as to all the diversions and
21 pumping that Clark Colony shareholders do.

22 MR. VIRSIK: Ms. Isakson may or may not know the
23 answer. But she testified she has worked for Clark Colony
24 Water Company for seven years, has reviewed all its filings.
25 She may know. She may not know. I don't know what her

1 answer will be.

2 H.O. BROWN: Ask the question again. Let me think
3 about it.

4 MR. VIRSIK: Ms. Isakson, as to the lands that Clark
5 Colony Water Company serves, do any of those lands use the
6 underflow of any river or other watercourse that crosses
7 those lands?

8 H.O. BROWN: The State has made no ruling as to whether
9 or not the Salinas River is percolating groundwater or
10 subterranean stream. There is nothing on the horizon that
11 even indicates the State's going to consider that issue.

12 MR. VIRSIK: You are sustaining the objection; is that
13 my understanding?

14 H.O. BROWN: I am walking through it myself at the same
15 time. I am kind of interested in hearing what I am going to
16 say on this myself.

17 If you would separate those two sources of water,
18 whether it is surface flow or groundwater, perhaps I might
19 allow the question. If you want to try to reask the
20 question with that as a foundation, I will consider it.
21 Let's see what you ask.

22 MR. VIRSIK: Let me try again.

23 Ms. Isakson, with respect to the land served by the
24 Clark Colony Water Company, do those lands use the surface
25 flows of any river or other watercourse that crosses those

1 lands?

2 H.O. BROWN: You may answer that question if you know
3 the answer.

4 MS. ISAKSON: I have a clarification. Clark Colony
5 Water Company is a surface diversion from the Arroyo Seco,
6 so all shareholders utilize that surface diversion. If you
7 are speaking of a surface diversion from another source, I
8 have no knowledge.

9 MR. VIRSIK: Well, let me move to something else.
10 Who are the officers of Clark Colony Water Company?

11 MS. ISAKSON: I don't know.

12 MR. VIRSIK: Can you tell me who the last set of
13 officers was that you do recall?

14 MS. ISAKSON: I believe the immediate past president
15 was Walter Griva.

16 MR. VIRSIK: And do you know how much the acreage of
17 lands served by Clark Colony Water Company is in row crop?

18 MS. ISAKSON: No, I do not.

19 MR. VIRSIK: Do you know how much is in vineyard?

20 MS. ISAKSON: No, I do not.

21 MR. VIRSIK: Do you know if any is in row crop?

22 MS. ISAKSON: I believe so.

23 MR. VIRSIK: Do you know if any is in vineyards?

24 MS. ISAKSON: I believe so.

25 MR. VIRSIK: Do you know what the term "double

1 cropping" means?

2 MS. ISAKSON: I have heard a couple different
3 definitions, so --

4 MR. VIRSIK: Do you understand it to mean that it is
5 when one plants within one planting season, within more than
6 one season, two crops in succession?

7 MS. ISAKSON: On the same property?

8 MR. VIRSIK: On the same property.

9 MS. ISAKSON: Okay.

10 MR. VIRSIK: Using that definition, do you know if
11 there is any double cropping within the area, within the
12 land served by Clark Colony Water Company?

13 MR. BEZERRA: I am going to object to this point on the
14 ground of relevance. I would like to understand where Mr.
15 Virsik's going with double cropping and all of that.

16 H.O. BROWN: Mr. Virsik.

17 MR. VIRSIK: I will just withdraw the question and move
18 on.

19 Ms. Isakson, are you also employed by an entity called
20 the Salinas Valley Water Coalition?

21 MS. ISAKSON: Yes, I am.

22 MR. VIRSIK: How long have you worked for the Salinas
23 Valley Water Coalition?

24 MS. ISAKSON: Approximately the last seven years.

25 MR. VIRSIK: Is the Salinas Valley Water Coalition and

1 Clark Colony Water Company the only companies you have had
2 in the last seven years?

3 MS. ISAKSON: No.

4 MR. VIRSIK: Do the Salinas Valley Water Coalition and
5 Clark Colony Water Company comprise the bulk of clients you
6 have as far as time and effort concerned within the last
7 seven years?

8 MS. ISAKSON: I'd say for a portion of that time, yes,
9 but not for the entire time, no.

10 MR. VIRSIK: What about for the last year?

11 MS. ISAKSON: No.

12 MR. VIRSIK: What client has comprised the entire bulk
13 of your time in the last year?

14 MR. BEZERRA: Once again, I would like to object on
15 the grounds of relevance. If Mr. Virsik could explain where
16 he is going with the general operations of Ms. Isakson's
17 business that would be useful.

18 MR. VIRSIK: Gladly. It goes to bias. If she works
19 for a foreign water company that wants to buy Clark Colony
20 water to export water to golf courses. I'm just
21 extemporating here.

22 H.O. BROWN: Mr. Bezerra.

23 MR. BEZERRA: Could he clarify what he means by "a
24 foreign water company"?

25 MR. VIRSIK: Just off the top of my head, let's say one

1 from San Luis Obispo County. I am trying to find out simply
2 if she has conflicting interests. Goes to bias. That is
3 all I am asking.

4 H.O. BROWN: How is this bias in the hearing as it has
5 been announced, how would it?

6 MR. VIRSIK: I am cross-examining Ms. Isakson on her
7 veracity about the Clark Colony water right, and we offer to
8 stipulate that we are not going to be representing that
9 right. That is all fine and well. Trying to find out if
10 she is -- if she has a basis to not be entirely truthful
11 about it because she is here offering testimony.

12 H.O. BROWN: We are fairly liberal on cross-examination
13 as it may vary from direct. I fail to see the analogy here,
14 but I'll go ahead and permit the question.

15 MR. VIRSIK: Thank you. I will just repeat the
16 question for purposes of the record.

17 Within the last year what client or clients have
18 comprised the major portion of your time and efforts?

19 MR. BEZERRA: I am going to object again. I think
20 among other things, the contents of Ms. Isakson's client
21 list, her billing, the time she spends on things, I think
22 those are essentially trade secrets. Among other things I
23 don't think she should have to testify about her client
24 list.

25 H.O. BROWN: Ms. Katz.

1 MS. KATZ: I think I agree with Mr. Bezerra on that
2 point, that Clark Colony is here under very limited
3 circumstances. And who Ms. Isakson also represents, I don't
4 know that that is really relevant, just like I don't know
5 that it is relevant who Mr. Virsik also represents.

6 H.O. BROWN: I will permit the question if you want to
7 just put it in a percentage, does she have how many other
8 clients, something like that, no specifics.

9 MR. VIRSIK: Sure.

10 How many clients, except for truly minor clients, how
11 many clients have you worked for in the last year if you can
12 tell us?

13 MR. BEZERRA: I would like to object to that on the
14 grounds it is vague. I have idea what truly minor clients
15 are.

16 H.O. BROWN: Mr. Virsik.

17 MR. VIRSIK: I will rephrase the question.

18 Can you give us a percentage of time within the last
19 year that you spent for matters relating to the Clark Colony
20 Water Company?

21 H.O. BROWN: Approximately.

22 MR. VIRSIK: Approximately.

23 MS. ISAKSON: Well, it is really difficult, and I am
24 going to say 15 percent.

25 MR. VIRSIK: Same question with respect to the Salinas

1 Valley Water Coalition.

2 MS. ISAKSON: Salinas Valley, I am going to say 50
3 percent.

4 MR. VIRSIK: If I wanted to find the water rights of
5 Clark Colony Water Company where would I go find that right?

6 MS. ISAKSON: I am not sure I understand your
7 question.

8 MR. VIRSIK: Let me try the question again.

9 If I wanted to find out what the right of Clark Colony
10 Water Company was, could you direct me to any written
11 material, text, record, anything that exists that I might go
12 look up that water right?

13 MS. ISAKSON: I am sorry. I am not sure I understand
14 the context of your question.

15 MR. VIRSIK: Let me ask a little more specifically.

16 Is the water right that the Clark Colony Water Company
17 claims contained in a book labeled "Water Rights" in the
18 Monterey County Recorder's office?

19 MR. BEZERRA: I would like to make a clarification.
20 Clark Colony water rights as I understand are pre-1914
21 rights, so, therefore, have no water right claims recorded.
22 But the water right would be dependent on any number of
23 other documents, as I understand it.

24 MR. VIRSIK: Let me make the question even more
25 specific, then.

1 If I was looking for the claim upon which Clark Colony
2 Water Company bases its claim of water right, could I find
3 that claim in the water rights book contained in the
4 recorder's office in Monterey County?

5 MS. ISAKSON: Yes.

6 MR. VIRSIK: Is it only one claim or more than one
7 claim that I would look in that book to find, the claim that
8 Clark Colony Water Company is asserting?

9 MS. ISAKSON: A series of documents.

10 MR. VIRSIK: How many -- if you know, how many claims
11 would I be looking for in that water rights book in order to
12 get the entire universe of water rights claims that Clark
13 Colony Water Company claims?

14 MS. ISAKSON: It would be a guess. When I did my
15 research, I believe probably you would be reviewing, I am
16 going to say, 20 documents.

17 MR. VIRSIK: You say you reviewed 20 documents. Is it
18 also your testimony, as far as your best recollection, that
19 all 20 would in some way or another represent a claim or a
20 part of a claim upon which Clark Colony Water Company claims
21 its water right?

22 MS. ISAKSON: To my understanding, yes.

23 MR. VIRSIK: Do you happen to recall the names or
24 dates of any of those claims?

25 MS. ISAKSON: Not offhand I don't, no.

1 MR. VIRSIK: Were any of those claims in the name of
2 Clark Colony Water Company?

3 MS. ISAKSON: Yes. There was one.

4 MR. VIRSIK: Do you recall if that one claim in the
5 name of Clark Colony Water Company was for a surface
6 diversion?

7 MS. ISAKSON: I believe so.

8 MR. VIRSIK: I believe you testified there is somewhere
9 in the neighborhood of 75 to 80 shareholders of Clark Colony
10 Water Company is my recollection, correct?

11 MS. ISAKSON: That is my guesstimate.

12 MR. VIRSIK: Are those shares, to your knowledge, are
13 those shares freely tradable?

14 MS. ISAKSON: No, they are not.

15 MR. VIRSIK: May I just have a moment, your Honor.

16 H.O. BROWN: Okay.

17 MR. VIRSIK: The one claim for Clark Colony Water
18 Company that you recall, do you know the amount of that
19 claim?

20 MS. ISAKSON: No, I don't recall.

21 MR. VIRSIK: Is it your position that is the position
22 of Clark Colony Water Company -- excuse me, that its
23 shareholders may exercise the full extent of the Clark
24 Colony Water Company claim?

25 MR. LONG: I don't have an opinion on that.

1 MR. VIRSIK: Do you, in fact, know if the Clark Colony
2 Water Company is exercising its full extent of the claim
3 contained under Clark Colony Water Company in the water
4 rights book?

5 MR. BEZERRA: I would like to object on relevance. I
6 understand, and I may be making a fine distinction here, but
7 we are getting into the area we talked about the specific
8 evidence as to the amount of water rights and that sort of
9 thing in the Salinas Valley. And it was my understanding
10 this hearing didn't go to the amount of rights.

11 We, our testimony, presented the identity of the water
12 rights holder not the amount of the right.

13 H.O. BROWN: Thank you.

14 MR. VIRSIK: Your Honor, first, I am scrupulously
15 avoiding asking for numbers. I am not asking whether they
16 do 5 acre-feet or 3,000 acre-feet. First of all, to make
17 sure we are not getting into any kind of adjudicatory mode.

18 Second of all, the amount that Clark Colony Water
19 Company doesn't claim is an amount that our client might be
20 claiming on a what we call a parallel right, a right that
21 overlaps geographically with Clark Colony Water Company's
22 claim or some other claim they may have.

23 H.O. BROWN: Mr. Bezerra.

24 MR. BEZERRA: I guess if that is the point of Mr.
25 Virsik's question, I would ask him to make an offer of

1 proof, what right he is talking about on his clients so we
2 can understand where he is going.

3 H.O. BROWN: Either that or perhaps you can rephrase
4 your question. It might work.

5 MR. VIRSIK: Let me try it again, Ms. Isakson.

6 With respect to the Clark Colony Water Company, I lost
7 my train of thought. It happens.

8 MS. ISAKSON: I don't know.

9 MR. VIRSIK: Let me put it in another phrase.

10 To the extent that the Clark Colony Water Company is
11 not presently exercising its full amount claimed under the
12 Clark Colony Water Company, whatever that amount is, and we
13 are not going to get into it, is it Clark Colony Water
14 Company's position that others may not claim the
15 differences?

16 MS. ISAKSON: I don't know.

17 MR. VIRSIK: Do you know if any of the lands served by
18 Clark Colony Water Company are using water, using surface
19 and groundwater water conjunctively, if you know what that
20 term means?

21 MR. BEZERRA: Again, I would like to object on the
22 grounds of relevance. Conjunctive use of surface water and
23 groundwater seems to me to go to the issue of the
24 reasonability of have water use in the Salinas Valley and
25 adjudication of water rights and once again we presented

1 this testimony as to the identity of rights not to their
2 amount or exercise.

3 MR. O'BRIEN: I would like to join in that objection.

4 H.O. BROWN: Thank you, Mr. O'Brien.

5 Mr. Virsik.

6 MR. VIRSIK: Again, I will point out I am not asking
7 about amounts. I am not interested in amounts. What I am
8 trying to find out is, given Ms. Isakson's prior response,
9 was that she doesn't know if the amounts -- her company's
10 position, Clark Colony Water Company's position, is that it
11 does not know whether -- does not have a position as to
12 whether water that they do not use under their claim of
13 right can be used by somebody else, which in this case would
14 include the Agency.

15 Are they using groundwater and surface water
16 conjunctively, the balance of which would perhaps belong to
17 the Agency or be retained by Clark Colony Water right. That
18 would be relevant to how much water is available for
19 appropriation.

20 H.O. BROWN: Mr. Bezerra.

21 MR. BEZERRA: I think it would only be relevant to the
22 issue of appropriation if Clark Colony is claiming a water
23 right on the Salinas River. And it is my understanding that
24 Clark Colony's water rights are -- surface water rights are
25 on the Arroyo Seco. Ms. Isakson may clarify that. If the

1 surface diversions are on the Arroyo Seco, and I am having a
2 hard time understanding, how it is relevant to the issue of
3 injury.

4 H.O. BROWN: Ms. Katz, do you have a --

5 MR. KATZ: If the surface water rights are to the
6 Arroyo Seco, that is tributary downstream. So I would agree
7 that I don't see the point here. Ms. Isakson has testified
8 she doesn't know whether they have groundwater or whether
9 they are using groundwater. I believe, was your testimony.

10 MS. ISAKSON: I think some are. But, yes, I don't
11 know.

12 MS. KATZ: I think that we are starting to get far
13 afield here as to water availability when the water that the
14 Agency would be diverting comes from the Nacimiento
15 watershed.

16 H.O. BROWN: Thank you, Ms. Katz.

17 Mr. Virsik, I am going to sustain the objection. I
18 have given quite a bit of latitude here on these questions.
19 But I've gone as far as I wish to go in this matter.

20 MR. VIRSIK: Very well. I only have a couple more
21 questions. One is clarifying something that came up a
22 moment ago.

23 With respect to the rights claimed by Clark Colony
24 Water Company, is that strictly from the surface flows of
25 the Arroyo Seco River?

1 MS. ISAKSON: Yes, I believe so.

2 MR. VIRSIK: Also, I don't believe you testified to
3 this on direct, is the Clark Colony Water Company claiming a
4 harm from the Agency's proposed appropriation that is
5 subject of this hearing?

6 MS. ISAKSON: No, they are not.

7 MR. VIRSIK: That is all I have.

8 H.O. BROWN: Thank you.

9 Mr. Bezerra, any redirect?

10 MR. BEZERRA: Yes. I just have one redirect question,
11 Mr. Brown. Thank you.

12 ----oOo----

13 REDIRECT EXAMINATION OF CLARK COLONY WATER COMPANY &

14 ROSENBERG FAMILY RANCH

15 BY MR. BEZERRA

16 MR. BEZERRA: Mr. Rosenberg, you stated in response to a
17 question by Mr. Virsik that the Rosenberg Family Ranch was
18 not exercising its surface water rights.

19 Can you explain what your understanding of surface
20 water rights is?

21 MR. ROSENBERG: I believe his question to me was do we
22 use surface flow.

23 MR. BEZERRA: Can you explain what surface flow means
24 to you and what you used it to mean in response to Mr.
25 Virsik?

1 MR. ROSENBERG: That is correct in what he asked me
2 what that question was?

3 MR. BEZERRA: Let's assume it is, and if you can
4 explain that that would be helpful.

5 MR. ROSENBERG: To me surface flow is diverting the
6 water that is flowing on the river by a ditch of some type.
7 That is flow. Anything other than that that you pump from
8 under the ground, no matter how shallow it is, is
9 groundwater. So I may have had a different understanding of
10 what he meant and what I meant when I answered the question.

11 MR. BEZERRA: You have explained what you meant at
12 this point.

13 If Mr. Virsik wants to clarify that, he can.

14 Thank you, Mr. Rosenberg.

15 H.O. BROWN: Recross, Mr. O'Brien.

16 MR. O'BRIEN: No.

17 H.O. BROWN: Any other parties?

18 MR. VIRSIK: No.

19 H.O. BROWN: No recross. Fine.

20 Mr. Bezerra, you have some exhibits you would like to
21 offer into evidence?

22 MR. BEZERRA: Yes. I would like to offer exhibits
23 Rosenberg 1 through 18 and exhibit Clark Colony 1 into
24 evidence.

25 H.O. BROWN: Clark County 1?

1 MR. MALONEY: Yes, your Honor. I first would like to
2 introduce the panel. The panel has not been sworn. Would
3 you like me to introduce them before you swear them or
4 after?

5 H.O. BROWN: You can introduce them afterwards.

6 (Oath administered by H.O. Brown.)

7 H.O. BROWN: Mr. Maloney, question here. We have in
8 our records that these are rebuttal witnesses.

9 Mr. O'Brien, you rise.

10 MR. MALONEY: I don't believe they are rebuttal
11 witnesses because certain communications between Ms. Katz
12 and Mr. Virsik regarding the witnesses.

13 H.O. BROWN: Mr. O'Brien.

14 MR. MALONEY: Secondly -- I can speak further on that
15 issue?

16 These witnesses would not be called at this time, but
17 for our -- not misunderstanding --

18 H.O. BROWN: In a minute, Mr. Maloney. I have already
19 called on Mr. O'Brien, and I will give you a chance to
20 respond.

21 Mr. O'Brien.

22 MR. O'BRIEN: Thank you, Mr. Brown.

23 The direct testimony that was submitted by Mr. Maloney
24 and Mr. Virsik consisted of, I believe, three witnesses:
25 Mr. Pyle, Pete Pyle; Mr. Dana Merrill; and Professor Hoover.

1 And there were various exhibits that went with that
2 testimony.

3 We are fully prepared to cross-examine that group of
4 witnesses because it was that group of witnesses we
5 understood would be the direct case of Mr. Maloney. I had
6 noticed the appearance of these ladies and gentlemen
7 pursuant to CCP Section 1987, to appear as part of our
8 rebuttal case, if necessary, relating to some of the claims
9 that were made by Mr. Maloney. There was no direct
10 evidence, direct testimony, submitted on behalf of any of
11 these witnesses. As I indicated earlier, I think it is
12 important that we follow the Board's hearing procedures,
13 and the hearing procedures clearly state you are to submit
14 your case in chief in advance so that parties like myself
15 have an opportunity to prepare for examination.

16 We are fully prepared to cross-examine the witnesses
17 whose testimony was submitted.

18 H.O. BROWN: Thank you, Mr. O'Brien.

19 Mr. Bezerra.

20 MR. BEZERRA: Thank you, Mr. Brown.

21 Primarily, I would just like to join Mr. O'Brien's
22 objection, but I would like to point out that Ms. Duflock
23 was not even noticed as a witness to testify on the Salinas
24 Valley Protestants Notice of Intent to Appear. So even if
25 she was designated -- even if Orradre was designated as a

1 witness, Ms. Duflock was not.

2 H.O. BROWN: Thank you.

3 MR. DONLAN: I would just like to join in Mr.
4 O'Brien's concerns as well on behalf of Tanimura & Antle.

5 H.O. BROWN: Thank you, Mr. Donlan.

6 MR. VIRSIK: If I may respond.

7 H.O. BROWN: Mr. Virsik.

8 MR. VIRSIK: The issue is about sandbagging
9 apparently. In our -- Salinas Valley Protestants wrote to
10 staff on June 13th specifically asking and citing rules or
11 sections of the administrative rules, 648.4(f), about the
12 need to have or not to have party witnesses. We were, as
13 far as we understood -- I don't recall Mr. Rosenberg -- he
14 had filed his Notice of Intent. We were otherwise the only
15 individuals involved. There were entity parties.

16 Given the rule and the letter of June 13th that we
17 wrote to Mr. Long and Ms. Katz replied the very next day.
18 We specifically asked, "Do we -- we understand that under
19 648.4(f) that we do not have to supply the actual testimony
20 of the parties. Because the rule states that a person who
21 wishes to participate as a party must also include the name
22 of each witness who will testify on that person's behalf.
23 We stated that it seems to us, that it doesn't mean that the
24 person, it means someone on your behalf. We asked that on
25 June 13th in plenty of time to submit proposed testimony for

1 everybody. On June 14th -- and copy of that letter went out
2 to everyone on the service list.

3 On June 14th Ms. Katz replied to a number of issues in
4 the letter which are not related to this point, about rules
5 of evidence and so forth and so on. In the last paragraph
6 of the June 14th letter she confirmed as to one point that
7 rebuttal testimony is limited to testimony intended to rebut
8 evidence presented by another party as part of the case in
9 chief, et cetera. And says your case in chief should
10 include all the witnesses and testimony that are relevant to
11 the issues noticed for hearing and inappropriate to present
12 testimony and exhibits as rebuttal. That evidence should
13 have been presented as part of the case in chief.

14 THE COURT REPORTER: Slow down.

15 MR. VIRSIK: That is a June 14th letter, last
16 paragraph. I have been listening to Mr. Maloney too often.
17 I'm speeding up.

18 She did not address, did not say, that we were wrong
19 about 648.4(f), and this is not merely she did not say,
20 therefore, we do as we please. We specifically asked that
21 question about the party witnesses. And everybody knew that
22 that was the question. And to the extent that we
23 misunderstood Ms. Katz's response, which is what I assume
24 she will say, all the other parties had the opportunity, if
25 they felt somehow that it was unclear, to tell us. We are

1 the ones that have been sandbagged all the way from the
2 beginning when we didn't receive notice, to be being told on
3 the Notice of Hearing, that State's Exhibit 2 would be
4 offered and it was withdrawn on objection. And our exhibit
5 list at the very bottom specifically says we are also
6 listing, without actually putting it here, all the matters
7 we submitted in protest which would be in State's Exhibit 2.
8 All sorts of notice to everyone in the exact way that we are
9 supposed to give notice.

10 Time and time again we asked because the procedures are
11 somewhat different than they have been in the past. Because
12 we have opportunity, plenty of opportunity to do it, quote,
13 the right way when we ask, and we have our clients here.
14 And again I do submit that is not going to make much of a
15 difference once you flip rebuttal and case in chief around
16 and ask the very question and stop, do cross-examination,
17 come back up and say now it is rebuttal. You guys don't
18 have to be noticed. Let's do the rest of the questions.

19 We are the ones being prejudiced time and time again.

20 H.O. BROWN: Mr. Maloney, do you add anything to that?

21 MR. MALONEY: Well, all I can do is read Ms. Katz's
22 letter and our letter to Ms. Katz. We raised this specific
23 issue, and Ms. Katz apparently felt that she was not going
24 to tell us that we had to put this in a NOI. We were
25 prepared to do that and we asked the specific question. The

1 letters are right here. I don't really think this is an
2 issue at this point because it seems to me that Ms. Katz has
3 raised the issue of who we represent, which I find
4 absolutely insulting after all the discussions we have had
5 about this issue.

6 I would like to have these witnesses describe who we
7 represent. That is part of what I will be offering with
8 these issues.

9 H.O. BROWN: Are these witnesses scheduled for
10 rebuttal, are they not?

11 MR. MALONEY: Yes.

12 H.O. BROWN: Mr. O'Brien, you rise.

13 MR. VIRSIK: For Mr. O'Brien's rebuttal.

14 MR. MALONEY: And they could also be used in rebuttal
15 on Mr. O'Brien's case in chief.

16 H.O. BROWN: Mr. O'Brien.

17 MR. O'BRIEN: First of all, I don't think it is either
18 my job or Ms. Katz's job to explain the Board's hearing
19 procedures. I think the notice is quite clear. I am going
20 to read from the information document attached to the Notice
21 of Hearing. Paragraph 3:

22 Each party proposing to present testimony on
23 factual or other evidentiary matters at the
24 hearing must submit the testimony in writing.
25 Oral testimony that goes beyond the scope of

1 written testimony may be excluded. Written
2 testimony is and will be treated as an
3 exhibit. (Reading.)

4 It couldn't been any more clear.

5 H.O. BROWN: Thank you, Mr. O'Brien.

6 Mr. Bezerra.

7 MR. BEZERRA: Thank you.

8 I would like to point out that we have had a lot of
9 discussion here about the letter of June 14th and response
10 and what it does or does not say. But I would like to point
11 out that Notice of Intent to Appear filed by the Salinas
12 Valley Protestants was dated June 2nd and did not include
13 Ms. Duflock as a witness that the Salinas Valley Protestants
14 intended to present.

15 I understand they present her in rebuttal, but I don't
16 think they can do it on direct.

17 Thank you.

18 H.O. BROWN: Thank you.

19 Do you have the witnesses here for the direct that you
20 have submitted?

21 MR. MALONEY: Yes, your Honor, two of the three. And
22 we prefer not to put them on until we have the meeting with
23 Mr. Antle's lawyers. It is important at this point we get
24 into the record who we represent after the comments that
25 have been made by Ms. Katz about our representation.

1 H.O. BROWN: I ask that these witnesses be reserved for
2 rebuttal, and that you prepare your witnesses for direct
3 with regards to the testimony that they have submitted.

4 I will give you some time in preparation of that if you
5 need that.

6 MR. MALONEY: Would the Board like us to put on
7 evidence as to who we represent since the issue has been
8 raised by Ms. Katz?

9 H.O. BROWN: Ms. Katz.

10 MS. KATZ: Is the list Mr. Brown read into the record
11 true and correct?

12 MR. MALONEY: My recollection --

13 MS. KATZ: Who the Protestants are?

14 MR. MALONEY: -- Ms. Katz, we reviewed that before he
15 read it in the record, and he indicated one of the problems
16 we have is with a certain individual, Etchenique. We have
17 land leases in the multitude of easements, et cetera, and I
18 indicated it'd probably be best to take Etchenique out.

19 MS. KATZ: That is the only one I asked you.

20 MR. MALONEY: That is the only one. I also indicated
21 that Samento should be out, and I also indicated because we
22 did not -- we only represented the general partner in
23 connection with that matter. I indicated the problem in
24 connection with Rosenberg.

25 There is an error in the map that has been submitted to

1 is optimizing the water resources of the Salinas River. The
2 County Monterey has two basic problems. There is a limited
3 amount of water in the so-called East Side and there is
4 saltwater intrusion on the lands adjacent to the ocean.
5 This problem has been well-documented for the last hundred
6 years. I suggest you look at Salinas Valley Project --
7 Protestants' Exhibits 11 and 12.

8 Paradoxically, the County created its own problem when
9 it reclaimed the swamps adjacent to the ocean. See
10 Protestants' Exhibit 11 and 14.

11 The Protestants contend that if all the pumping data
12 were carefully analyzed and verified and the Agency's own
13 model were used running this data and the conditions that
14 existed prior to the reclamation project was maintained, the
15 County's own model would prove that the saltwater intrusion
16 is the County's own reclamation project.

17 The nature of the problem in the Salinas Valley was
18 recognized in the Agency's own exhibit, Bulletin 52 and
19 0203. What that particular exhibit said at Page 23 was the
20 only overdrafts on groundwater in the Salinas Valley are in
21 the East Side and Pressure areas. There is no present
22 shortage of groundwater in the remainder of the basin and no
23 threat of deficiency under probable ultimate development.

24 What is important is in the Agency's case in chief
25 nobody knew what an overdraft was and nobody knew if there

1 was any fact which would have changed the Bulletin 52
2 conclusions. The applicant's solution for the last 50 years
3 has been the big bucket solution. The big bucket solution
4 contemplates the building of an ever increasing reservoir
5 storage and collecting the flows during the winter and
6 spring flows a hundred miles south of the problem and then
7 releasing the water collected in the reservoirs down the
8 Salinas River during summer months to stop saltwater
9 intrusion and reduce the overdraft of the East Side.

10 The problem we have today is that development has
11 occurred, is occurring between the reservoirs and
12 Gonzales. That requires the natural conditions be more
13 closely followed. In other words, the aquifers in this
14 region must be refilled before water is stored in the
15 reservoirs. The futility of the big bucket solution was
16 recognized in Bulletin 52. Again, this is a document
17 submitted in the case in chief by the applicant at Page 31.

18 Irrespective of the method of salvage employed to
19 capture some of the surface outflow from the Forebay area, a
20 complete solution must embrace a plan of delivery of water
21 from either in surface or underground reservoirs, to
22 locations where additional water is required. Release of
23 surface storage and increased percolation in the streambeds
24 south of Gonzales without artificial means of conveyance
25 would be ineffective to relieve overdrafts in the East Side

1 and Pressure areas.

2 This means that to properly protect the water uses of
3 landowners immediately downstream of the reservoirs, the
4 reservoirs have been managed so as to protect the effective
5 water users in the valley. This is not a complex thing to
6 do. It requires an objective stream accounting and pumping
7 system, recognizing land use, time of water use and water
8 levels. With the data within the control of the Agency,
9 subject to review of affected parties, this system could be
10 developed within 30 days by competent staff. An objective
11 stream accounting and pumping system has been developed in
12 the upper Salinas River and other streams throughout the
13 state.

14 The Protestants have no idea why the applicant
15 continues to refuse to develop objective stream accounting
16 and pumping system. This is clearly something that the
17 Board can and should consider under its notice, Paragraph
18 2. If so, what conditions, if any, should the Board adopt
19 to protect senior water rights holders.

20 Procedurally, we have about three questions we'd like
21 to address at this point. At the conclusion of testimony
22 last Tuesday we reviewed the area of use of the existing
23 Nacimiento license, License No. 7543, with the State Board
24 staff. From the review of the license, there does not
25 appear to be any modification in the area of use as

1 licensed by this Board after 1994.

2 What I am going to do is look at the attachments to the
3 license which were brought down by Mr. Moller this morning.
4 What this shows is an area of use including the Armstrong
5 Ranch, Marina Coast Water District, Fort Ord annexation and
6 some areas along CSIP.

7 H.O. BROWN: Reference the exhibit.

8 MR. MALONEY: Reference the exhibit would be from the
9 Board's file in connection with Zone 2B, which I understand
10 is the zone that relates to the Nacimiento license. This
11 comes from the State Board file, and the license number is
12 7543.

13 The problem is that the Agency has represented
14 throughout this hearing that it does not intend to expand
15 the area of use. So the fundamental question is does the
16 area -- what is the area of use of this application. We are
17 assuming for the purpose of this hearing that it does not
18 include Fort Ord, Marina or any of these areas, Armstrong
19 Ranch, or any of the areas adjacent to the district to Zone
20 B in the northern area above Castroville as reflected on
21 this particular map. I believe this is map one that is
22 currently filed.

23 We have gone through the Board's records and find no
24 reference to any expansion of area of use, so we are
25 assuming for the purpose of this hearing that the area of

1 use of the license has not, in fact, been expanded.

2 Secondly, the record should also show that CCP Section
3 1930 -- and this I am doing at the suggestion of Ms.
4 Katz. I think this could be handled better with a letter,
5 but Ms. Katz thinks it should be in the opening statement.
6 That the Section 1987 notice to the Agency for records of
7 the recorder and the assessor was substantially narrowed to
8 no more than ten separate books of record. Some books
9 contain multiple documents requested and not the
10 tractor-trailer materials the Agency has asserted. The
11 letter of July 15th, 2000, from the Protestants to the
12 Agency lists these specific materials, copies of which
13 letters were provided the Board and the Hearing Officer in
14 advance of the ruling on the Section 1987 notice.

15 The correspondence between the Agency and the
16 Protestants on the Section 1987 notice discussed in detail
17 the problems with the Protestants copying the public
18 documents. As part of this record, the Protestants have
19 submitted copies of the records available with the
20 technology available. If the Agency had been required to
21 produce the requested witnesses, he would have testified as
22 follows, this being the individual from the assessor's
23 office which was covered in the letter that we wrote in
24 clarifying the original notice.

25 Assessor parcel numbers or present parcels are based in

1 many instances on traditional ranches. If the three digit
2 assessor book number starts with a 1, 2, or 3, and does not
3 end in a zero, it indicates that the book was created to
4 conform to the boundaries of a traditional rancho, which is
5 Mexican or Spanish land grant.

6 If the three digit assessor book number ends with a
7 zero or double zero, it tends to indicate a city. If the
8 three digit assessor book number starts with a 4, the book
9 shows government patent land by township and range lots.

10 The County of Monterey, and this is important to the
11 history of how water was used in Monterey County, the County
12 of Monterey was resurveyed between 1910 and 1912. And in
13 this survey the County developed an assessor or parcel
14 system. The results of the survey as to land use, crops in
15 production, water resources and other features were written
16 on assessor parcel map books between 1910 through
17 approximately 1960. By examining the APN of any given
18 parcel in Monterey County and comparing the APN against the
19 1910 through 1912 surveys, as modified between 1910 and
20 1960, you can quickly develop a preliminary title history of
21 the property covered by the APN in Monterey County. This
22 also gives you all the historical water uses and what was in
23 that property, whether or not water rights have been
24 abandoned, et cetera.

25 The old parcel books are fragile and the assessor does

1 not allow copies to be made of the books, does not allow
2 them to be removed from the office for professional
3 reproduction by document photography. The Protestants'
4 Exhibits 45 and 47 give exemplars of the problems with
5 photographs of the exhibits done on-site. Protestants'
6 Exhibits 29 and 33 through 37 represent an attempt by the
7 Protestants to classify the water rights of different
8 parcels in the Salinas Valley groundwater basin, in a review
9 of the above referenced data. That relates to why it was so
10 important to have this data here so we can see the whole
11 history of the valley.

12 This Board made a decision that we couldn't have that
13 data here, and you will see when you look at our exhibits
14 how difficult it is to copy.

15 Thirdly, we hope to be able to provide a case in chief
16 and rebuttal, and this was based on our letters to Ms. Katz
17 on June 13th and 14th, which the Hearing Officer already
18 ruled on. And we have presented here evidence of all our
19 landownership, and this is found in Exhibits 21, 28, 32 and
20 43. We are at a loss in light of the Clark Colony testimony
21 as to how much more detail is expected by this Board in
22 connection with landownership. We have it all very well
23 detailed, and it can be gone into. This landownership we
24 assume was going to be part of the exhibits because it was
25 stated in the notice that it would be included in the

1 exhibits as part of State's Exhibit 2.

2 The important thing about this landownership
3 documentation and our understanding as to the water usage is
4 that the Agency has never controverted the evidence. The
5 Agency has never argued that we were -- did not have right
6 to use the water and were not using it properly.

7 Admittedly, this is not the type of evidence that could
8 be used in a court trial, and we do not expect to be of that
9 type because we are not interested in adjudication. All we
10 are attempting to show here is the amount of water available
11 for use downstream, how much water is needed downstream and
12 how that water -- how we have the rights or entitlements to
13 use that water.

14 We believe the evidence will show there is not
15 sufficient seasonally unappropriated water for the Agency to
16 store on an unconstrained basis or unregulated basis. Now I
17 wanted at this point to explain the landownership that we
18 thought would be a dead issue because it was going to be
19 State's Exhibit 2. I will not go into that.

20 The Agency -- now I am going into the parties. This
21 will be over very quickly. The Agency needs no explanation.
22 The only evidence of satisfaction of senior downstream water
23 rights that the Agency has offered is that there is excess
24 water that wastes to the ocean. So, therefore, it can be
25 captured. The problem is not when there is excess water due

1 to greater than average rainfall or other climatological
2 conditions, but when there is not enough.

3 When there is a drought, the Agency must be obligated
4 to satisfy the Protestants and others in the south first.
5 Only once these needs are satisfied can the Agency then put
6 its stored water to use for others, general recharge and/or
7 on a new project. As to the water rights in the Salinas
8 Valley, as to the Agency there are only classes: the right
9 the Agency has to appropriate and more important its lawful
10 exercise of its license and all other senior rights in the
11 aggregate. As to the Agency, the individual distinctions
12 among rights matters not.

13 Now, it is our understanding that Mr. Rosenberg's issue
14 has been resolved; there is no need to go into that. The
15 Clark Colony issues have been resolved. The only thing we
16 are concerned about the Clark Colony issue is that does the
17 water right the Clark Colony is claiming as a pre-1914 right
18 inure to people other than the current shareholders of Clark
19 Colony, and that issue should be carefully -- that issue I
20 believe is beyond the scope of this hearing, and we would
21 hope that the Board does not get into that issue by making
22 any findings in connection with the Clark Colony issue.

23 H.O. BROWN: Mr. Bezerra, Mr. Maloney has another five
24 minutes on his presentation. Then I will let you stand.

25 MR. BEZERRA: Thank you. I apologize for rising during

1 his opening; at the same time I felt that it needed a
2 response.

3 H.O. BROWN: Thank you.

4 MR. MALONEY: That is the only concern about Clark
5 Colony's right, is that if they are using less than that
6 guaranteed by the pre-1914 right in the book, who does that
7 inure to? Does it inure exclusively to the current
8 shareholders in Clark Colony or does it inure to other land
9 holders?

10 The common thread of all the Protestants is that they
11 have rights senior to those of the Agency, irrespective of
12 the precise class or description of the right to use water.
13 The unfettered ability of the Agency to store additional
14 water has some potential for adversely impacting their use
15 of water.

16 Now we are going to have -- we don't feel it is
17 necessary to go into this with witnesses and legal
18 discussion as to whether a CEQA discussion is inadequate,
19 and we don't think that it is necessary to go into in the
20 case in chief. Those are essentially legal issues that can
21 be resolved in closing briefs.

22 The important thing here is that the Agency throughout
23 its whole existence has never conducted an analysis of the
24 impact which its reservoirs have on downstream senior water
25 users -- or water rights. If such an analysis had been

1 done, it would have been shown that certain water users
2 comprise well in excess of a hundred thousand acres of land
3 capable of exercising rights of four acre-feet per acre or
4 some other reasonable use of water.

5 In addition to the southern aggregate rights, the
6 entire course of the Salinas River is limited with lands
7 which have a right to water by operation of law. The
8 aggregate southern rights are several classes, like
9 riparian, overlying as to groundwater from place to place.
10 These would be percolating rights. Pre-1914 appropriative
11 rights based on approximately 20 claims of record and a
12 history of continuous application of water from
13 pre-California times to date; and, four, rancho rights as
14 referenced in the California Supreme Court case from 1930
15 and supported by historical record. We would put in
16 evidence on this that supports the extent of these rights.
17 The San Diego versus Cuyamaca Water, 1930, 209 Cal. 105.

18 Protestants are ready to present evidence that the
19 south was using water in a productive manner from the
20 earliest written records, whereas the northern areas of the
21 Salinas Valley were swamplands which by definition could not
22 have perfected any water rights prior to 1914.

23 The traditional crops of the Salinas Valley are fruits,
24 nuts, wheat, cows and grapes. Lettuce, broccoli, artichokes
25 and other truck and row crops are late additions to the

1 valley and have done -- what these people have done is
2 shifted their water perception away from the traditional
3 understanding that the southern part of the valley is one of
4 historic breadbaskets of the state and the world.

5 The water uses in the aggregate of these people in the
6 southern part of the valley prevent the Agency appropriation
7 of even the present limited license capacity of the
8 reservoir in the absence. And this is the appropriate
9 conditions limiting its operation thereof. We are not at
10 this point arguing that the currant license should be
11 modified. We have made a motion, that 275 be considered.
12 We think that will be an appropriate motion to renew after
13 this hearing. The Agency to the southern rights. The
14 Agency's own evidence shows the evidence injured the rights
15 of the southern right holders when it withheld water during
16 drought conditions. One of the most significant differences
17 between the seasonal and northern need for water and the
18 southern need is based on predominance of grapes in the
19 south. Vineyards use the most water for frost protection in
20 the cold late winter and early spring. The vineyards use
21 substantially less water than the row crop areas in the
22 summer months.

23 The problem the vineyards have in this use of water for
24 frost protection is they can't guarantee exactly how much
25 water they are going to use during the late winter and

1 summer and spring months. That depends entirely upon how
2 much frost there is. But the absolutely crucial thing is
3 that they get their underflow area or groundwater basin,
4 depending on what your definition is of the water that is
5 being pumped, filled before you start filing any water in
6 the reservoir.

7 The Agency's evidence is that they operate the only
8 reservoirs only so as to have water available to the north
9 and for other row crop uses during the hot months, releases
10 during the so-called irrigation season. That is in essence
11 what the problem is here.

12 This problem can be dealt with if people sit down and
13 develop the management program for the whole water
14 resource.

15 Now injuries in the south will increase as development
16 occurs and lands can use more water. When this will become
17 particularly acute is if you have a serious frost season
18 during a drought condition. We will talk about this with
19 Mr. Merrill.

20 Injuries may be difficult to prove, but that does not
21 make the injuries speculative. Speculative is if there are
22 injuries you have to go through the difficulty of proving
23 them; you just can't say they're hard to prove and say you
24 don't have any injuries.

25 H.O. BROWN: Two more minutes, Mr. Maloney.

1 MR. MERRILL: It looks good.

2 MR. MALONEY: Is there any part of that testimony to
3 which you would like to add information?

4 MR. MERRILL: No.

5 MR. MALONEY: Let me ask you -- and you basically --
6 let me ask you a couple small questions.

7 MR. MERRILL: Is this the last time to say anything
8 additional?

9 MR. MALONEY: Would you like to say something
10 additional about your testimony?

11 MR. MERRILL: Yes, I guess I would. I would like to
12 make the comment that it is not at all unreasonable to
13 conclude that the lands that have 15 percent slope or less
14 will be developed as vineyards in the southern part of the
15 county. In reviewing the potential dry farm acreage in Zone
16 2A south of Gonzales which my staff worked on --

17 MR. MALONEY: Wait a second, Mr. Merrill.

18 H.O. BROWN: There has been an objection raised.

19 MR. O'BRIEN: Pardon me, Mr. Merrill.

20 This goes beyond the written testimony submitted, and
21 there is no testimony in Mr. Merrill's direct testimony
22 about the 15 percent slope issue. If they want to come back
23 to this issue on rebuttal, assuming it is proper rebuttal,
24 they can do that.

25 MR. MALONEY: I agree it goes beyond the testimony as

1 submitted. However, I think it basically supplements the
2 information that is in the original testimony about the
3 12,000 acres that existed in Napa in 1970 and the projected
4 increase in that acreage by the current -- what happens over
5 30 years. And I see this testimony that Mr. Merrill is
6 going to offer is merely cumulative of the testimony that is
7 already in his written testimony, and I think there's no
8 need to call him back this afternoon so he can go off and
9 conduct his business. I don't think it's a shock; its no
10 shock to anybody, and they were fully aware of the 15
11 percent acreage issue.

12 H.O. BROWN: Thank you, Mr. Maloney. I'm sticking to
13 the rules on this one. Objection is sustained.

14 MR. O'BRIEN: Mr. Brown, may I have a motion to strike
15 that last portion of Mr. Merrill's testimony?

16 H.O. BROWN: I am going to leave it in the evidence.
17 Overruled on that.

18 MR. MALONEY: Now, again, we are asking Mr. Merrill to
19 come back this afternoon. He is a very busy man. All we
20 want to ask him is has he reviewed Mr. Taghavi's red line
21 from the case in chief, does he have any opinion about the
22 further development of acreage within the red line.

23 H.O. BROWN: It is rebuttal.

24 MR. MALONEY: Could you give me a short -- spend some
25 time going over Mr. Merrill's qualifications.

1 Could you give me a certain -- could you please
2 describe your educational background. Mr. Merrill.

3 MR. MERRILL: I have a Bachelor's degree from Cal Poly
4 in San Luis Obispo in agricultural business management.

5 MR. MALONEY: What have you done since you graduated
6 from college?

7 MR. MERRILL: I have been involved with various
8 agricultural management endeavors, but most of my time for
9 the greater part of the last 15 years has been managing wine
10 grape vineyards from Santa Barbara County up through
11 southern Monterey County.

12 MR. MALONEY: Are you involved in any professional
13 organizations?

14 MR. MERRILL: I have been involved in a number of them.
15 I have been chairman of the California Association of Wine
16 Grape Growers most recently and am in the middle of my term
17 at the moment.

18 MR. MALONEY: Could you tell me what the California
19 Association of Wine Grape Growers does?

20 MR. MERRILL: It is a political advocacy group that
21 seeks to operate on behalf of the issues facing growers.
22 California wine grape growers and such things as trade
23 issues, business-related issues, labor issues. Most
24 recently I am sure you heard of the sharp shooter Pierce's
25 disease is on the top of our list right now.

1 MR. MALONEY: You have any specific management
2 responsibilities in connection with any of the Protestants
3 here today?

4 MR. MERRILL: Yes. My company, Coastal Valley
5 Management, manages San Bernabe Vineyard, which is owned by
6 the Indelicato family. And in terms of Protestants, we also
7 manage other properties in the Monterey and Santa Barbara
8 area that total 22,000 acres in roughly the San Ardo, King
9 City area, and we manage another 2,500 acres in Santa
10 Barbara for other owners, not related to the Indelicatos.

11 MR. MALONEY: Could you give a brief description of San
12 Bernabe Vineyard.

13 MR. MERRILL: San Bernabe Vineyard is a reportedly
14 largest contiguous vineyard in the world. It is nominally
15 13,000 acres of land. Check the record to make sure that is
16 right. That is my recollection, gross acreage. But the
17 principal business, they are raising wine grapes, premium
18 wine grapes. Acreage has varied over the years, between 7-
19 and 8,000 acres, generally speaking. There is additional
20 land available for development. Could conceivably reach as
21 high as 10,000 acres, depending on market conditions and
22 demand for quality wine and so on. It's an engineering
23 marvel. It produces wildly recognized high quality premium
24 wines and has for 25 years.

25 MR. MALONEY: Could you tell me how much water San

1 Bernabe pumps?

2 MR. MERRILL: The average is about 15,000 acre-feet a
3 year. And on an annual basis, although I think you
4 mentioned before, it can vary depending on frost
5 requirements on a given season and also to some extent the
6 demand for water during the period of summer. But the
7 biggest factor is the frost requirement in spring.

8 MR. MALONEY: Do you have any idea how much water is
9 required during spring?

10 MR. MERRILL: Generally speaking, we can use anywhere
11 from a third to as high as 40 percent of the water during
12 the spring for frost. Again, it is seasonally dependent on
13 weather patterns. The grapes are very vulnerable to spring
14 frost when they are leafing out, so we have to turn on the
15 water to protect them from frost damage.

16 MR. MALONEY: Do you have any idea how much San Bernabe
17 spent on its -- how much it would cost to replace the water
18 system in San Bernabe?

19 MR. MERRILL: It would be my estimate that it would not
20 be unreasonable at all that that could be \$30,000,000 or
21 more to replace the water system at San Bernabe. It is a
22 difficult number to assess because it's been built over the
23 past 20 years and replacement values being what they are,
24 when one actually got bids, you might find some variations
25 in that. I am sure it is in that range.

1 MR. MALONEY: In your opinion, do you believe that you
2 are optimizing the water resources available to San Bernabe?

3 MR. O'BRIEN: Objection. Lack of qualification for
4 this witness to answer that question.

5 H.O. BROWN: Mr. Maloney.

6 MR. MALONEY: I think he is totally qualified. The
7 wine industry says he is one of their major leaders, and
8 he's been operating the largest vineyard in the world. He's
9 already offered testimony, his written testimony, he's
10 reviewed the optimization plans in the Napa Valley and he's
11 operated a very sophisticated water system. I can go into
12 further examples of how he's optimized the water resources,
13 which I plan to do next, if you would like me to do that
14 before you rule on the objection.

15 H.O. BROWN: Final word, Mr. O'Brien.

16 MR. O'BRIEN: Mr. Merrill clearly knows a lot about the
17 wine industry. I don't believe he knows a lot about water
18 resources management. He is not an engineer. He is not a
19 hydrologist. I believe this is beyond the scope of his
20 qualifications.

21 H.O. BROWN: I overrule.

22 You can answer if you know. If you don't know, then
23 you can --

24 MR. MERRILL: Actually --

25 H.O. BROWN: Wait a minute.

1 MR. MERRILL: I am sorry.

2 H.O. BROWN: You can go ahead and answer if you know
3 the answer. If you don't know and have an estimate, you may
4 so qualify it.

5 MR. MERRILL: Repeat the question.

6 MR. MALONEY: Could you describe over the last ten
7 years, 10 to 15 years -- I am changing the question a little
8 to make it clearer -- what efforts you have done to optimize
9 water resources? The type of thing I am interested in is:
10 Have you replaced sprinklers with drips? This type of
11 thing. How do you use the water that you actually apply?

12 MR. MERRILL: We have been installing drip irrigation
13 over the past 15 years and have dramatically reduced the
14 amount of water that we need to apply during the summer,
15 doesn't have a big affect in the frost time of the year, but
16 it is also significant. We also use weather stations, soil
17 probes, a number of other technological advances that would
18 lead me to conclude that we are optimizing the use of
19 water. Not that that isn't a moving target as the years
20 move ahead, but I will say today we can point to the fact
21 that we are optimizing the use of water.

22 MR. MALONEY: You have looked at a number of vineyards
23 in the state of California; is that not correct?

24 MR. MERRILL: Yes.

25 MR. MALONEY: How does your use of water and the

1 optimization of the water use compare with some of the other
2 vineyards in the state of California?

3 MR. MERRILL: It would be my opinion that we would
4 compare favorably. A big factor in water use is whether --
5 having drip irrigation systems and systems of water use
6 makes a lot of difference. I am not submitting that we are
7 the only ones to do that. I think we rank favorably with
8 the others.

9 MR. MALONEY: Do you do any furrow irrigation in the
10 vineyard?

11 MR. MERRILL: No furrow.

12 MR. MALONEY: Do you feel San Bernabe has materially
13 reduced its water resources over the last 15 years, do other
14 crop modification or any other things?

15 MR. MERRILL: There is a tendency to plant what we
16 term, call, replant or replanting. When a vineyard gets to
17 be 25, 30 years old, it is time to tear the vineyards out
18 and plant new ones. In an absolute sense we may add more
19 vines per acre. Newer technology tends to be with permanent
20 crops all over the world of higher plant populations, to try
21 to offset increasing labor costs and to optimize planting
22 density, lowering pounds of fruit per vine in order to make
23 a better quality wine. In some cases putting more vines in
24 per acre could actually result in water use, perhaps not
25 increasing, not decreasing, as it could be because you might

1 have more vines to water.

2 One of the big changes at the ranch has been the
3 conversion of former row crop lands from row crop to
4 vineyard, and that results in a substantial drop in the use
5 of water. In the south county four to five acre-foot of
6 water used per year on row crops is not unusual and our
7 vineyard use is anywhere from a half to a third of that
8 figure. So that has been substantial savings, converting
9 from row crop to vineyard.

10 H.O. BROWN: Clarification. Your question was
11 reduction as it related to water resources. Perhaps you
12 meant as it related to water resource requirement and not
13 water resources.

14 MR. MALONEY: Yes, water source requirement and use.
15 Thank you, your Honor, for clarifying the question.

16 Let me ask you a question about the storage of water in
17 Nacimiento.

18 In your 15 years of operation has the storage of water
19 in Nacimiento in any way interfered with your operation of
20 the San Bernabe vineyards?

21 MR. O'BRIEN: Objection. Goes beyond the written
22 testimony.

23 H.O. BROWN: Mr. Maloney, is that in the written
24 testimony?

25 MR. MALONEY: I think it is. Any storage of water in

1 Nacimiento that interferes or has the potential to interfere
2 with San Bernabe's ability to obtain water from the water
3 bank is objectionable. I am going to ask him why he
4 believes it is objectionable.

5 H.O. BROWN: Overruled.

6 MR. MERRILL: We experience problems during the drought
7 years. It has been referred to -- I think I have seen it in
8 -- the years go by and it is hard to remember what year that
9 was. Assuming that it is possible to verify what years the
10 droughts were. Between '90 and '92 seems to me were the
11 drought years, we did experience significant problems during
12 the same time that -- the waters were not released from
13 Nacimiento or San Antonio. When no water was released for
14 -- again, I don't remember how long. It was a considerable
15 length of time. It was considerable departure from how the
16 dams were managed with more rains. We experienced
17 difficulties in a couple of major areas.

18 One was the fact that the water tables dropped
19 significantly to the point that we had 27 wells that pump
20 into the main vineyard, and we had to reduce it as few as
21 ten wells to try to keep them pumping. It wasn't possible
22 to run them all.

23 I'll tell you in terms of damages, damages, can you
24 prove damages or not, we literally had to cancel our row
25 crop tenant lease on a portion of this ranch, and that

1 resulted in another \$90,000 a year for two years, I believe,
2 that we -- we just had to bail on it because we had to take
3 the water from those wells that served that tenant and put
4 them into trying to save the vineyard.

5 MR. MALONEY: When was most of this water needed as
6 best of your recollection?

7 MR. MERRILL: Well, the most serious threat we faced
8 was during frost time and that would be in the spring, late
9 winter, early spring.

10 MR. MALONEY: It is your opinion that if water is not
11 released in dry conditions during the springtime it has in
12 the past or in the future of being objectionable to San
13 Bernabe; is that correct?

14 H.O. BROWN: Ms. Lennihan, you rise.

15 MS. LENNIHAN: Mr. Brown, I would like to object. I
16 just had the opportunity to quickly read through the direct
17 testimony because this was new to me as well in terms of
18 what Mr. Merrill had been called. And I think it is outside
19 the scope of this direct, and I would like to move to strike
20 the testimony we just heard. Perhaps we can ask counsel
21 for, say, to specify for us where in the direct testimony
22 this topic is covered so that we can be specific.

23 MR. MALONEY: Yes, I can do that if you would like me
24 to.

25 H.O. BROWN: Thank you, Ms. Lennihan.

1 Mr. Maloney, Ms. Lennihan raises a good point here.

2 MR. MALONEY: Yes. Page 2, the paragraph in the
3 middle. And what we are going to is the words "interferes
4 or has the potential to interfere." One of the problems we
5 have in this direct testimony where I think we have been
6 severely prejudiced is in connection with our testimony is
7 that we offered this testimony before we knew the full scope
8 of this hearing. So we were much -- and the scope of this
9 hearing was reduced dramatically, in our opinion, in the
10 original rulings on Tuesday.

11 And this testimony was -- we would be able to cover
12 much more of this testimony if we knew what the scope of
13 this hearing, would have prepared our testimony differently
14 if we knew the full limits of the scope of the hearing.

15 H.O. BROWN: Ms. Lennihan.

16 MS. LENNIHAN: Mr. Brown, two items. First, with
17 respect to the direct testimony to which Mr. Maloney refers,
18 the only statement that I can see here is the statement:

19 Any storage of water in Nacimiento that
20 interferes or has a potential to interfere
21 with San Bernabe's ability to obtain water
22 from the water-bearing formation on its
23 property is objectionable. (Reading.)

24 That is nowhere sufficient to put other parties on
25 notice of specific basis of objection, for example,

1 hydrologic conditions, experience or whether there was
2 actually water shortage or whatever it is that Mr. Merrill
3 might want to testify to.

4 So I would reiterate my objection. I think that Mr.
5 Merrill's testimony remains outside the scope of direct.

6 Secondly, with respect to the concerns Mr. Maloney
7 expressed about the scope of hearing, all of us have been
8 subject to the same timetable and same period when we
9 learned what the scope would be with respect to your
10 rulings, and I don't think there is any prejudice or
11 unfairness in that respect.

12 Thank you.

13 H.O. BROWN: Maybe more specific on what you wish to
14 have stricken?

15 MS. LENNIHAN: Mr. Merrill I think -- perhaps I would
16 have to have the record read back -- I think his responses
17 to the last couple of questions have gone far beyond the
18 scope of this one sentence on Page 2 in his direct
19 testimony.

20 H.O. BROWN: That is the last two questions.

21 Mr. O'Brien, you rise.

22 MR. O'BRIEN: I simply wanted to join in Ms. Lennihan's
23 objection and motion to strike.

24 H.O. BROWN: Mr. Maloney, last word.

25 MR. MALONEY: Yes. We will offer this in rebuttal to

1 the case in chief to show damages. If the opposition
2 requires that we bring him back this afternoon, we will
3 bring him back this afternoon and offer specific dollar
4 damages, et cetera, in response to their case in chief as a
5 rebuttal witness.

6 H.O. BROWN: Ms. Katz.

7 MS. KATZ: Mr. Brown, our rules are pretty clear that
8 he can't go beyond the written testimony in your oral direct
9 testimony. And I think that Mr. Merrill's oral testimony
10 clearly goes beyond the scope of his written testimony.
11 Whether they want to raise this stuff on rebuttal is a
12 separate question. As to our procedures on direct, I think
13 it's clearly beyond the written testimony.

14 H.O. BROWN: Thank you, Ms. Katz.

15 Esther, can you find those last questions and let's
16 hear the questions back on this, the answers and the
17 questions.

18 (Record read as requested.)

19 MR. MALONEY: Your Honor, can I make a comment? We
20 talk about storage of water in this statement. We
21 specifically say any storage of water that interferes or has
22 the potential to interfere.

23 MR. O'BRIEN: Mr. Brown, I believe the problem is that
24 the witness went well beyond the limits of the question and
25 got into the description of these, the other alleged

1 incidents in which supposedly there was some problem. I
2 think that is really where the problem lies, is the witness'
3 answer to the question, not the question itself.

4 H.O. BROWN: Mr. Maloney, this is what we will do on
5 this. I'll have the Court Reporter to refresh your memory
6 as to the questions. I will strike the answers to those
7 questions and give you the opportunity to reask those
8 questions and having the witness to be more specific as to
9 his direct testimony as it may or may not relate to the
10 direct testimony.

11 If it relates to the direct testimony, I will allow it.
12 If it does not, then I will not allow it. So you may reask
13 the questions and I will anxiously await the answers to see
14 if I will allow it.

15 MR. MALONEY: Does any storage of water in Nacimiento
16 interfere -- excuse me, let me do it three ways.

17 Does any storage of water, in your opinion, interfere
18 with San Bernabe's ability to obtain water from
19 water-bearing formations on its property?

20 MR. MERRILL: Yes.

21 MR. MALONEY: Has any storage of water in Nacimiento
22 have the potential for interfering with San Bernabe's
23 ability to obtain water from water-bearing formations on its
24 property?

25 MR. MERRILL: Yes, it has.

1 MR. MALONEY: Is there any particular season that that
2 interference -- is there any particular season of the year
3 during which that interference occurs?

4 H.O. BROWN: All right.

5 Ms. Lennihan.

6 MS. LENNIHAN: I would like to renew the objection and
7 point out once again with all due respect to Mr. Maloney
8 that his witness' only statement on direct was a remarkably
9 broad statement which is that any storage that interferes or
10 has the potential is objectionable.

11 That is not sufficient to put the other parties in the
12 proceeding on notice of any specific things with respect to
13 seasons such as Mr. Maloney is now inquiring or others.
14 It's substantially the same as saying that it is sufficient
15 for a witness on direct to say this is the topic I am going
16 to talk about and then they can elaborate. So I would
17 object on that grounds, outside the scope of direct where
18 Mr. Maloney is now trying to go.

19 H.O. BROWN: This is a tough call, Mr. Maloney. I am
20 going to overrule the objection. I am going to ask you to
21 not pursue this line of questioning in much more depth.

22 MR. MALONEY: I am going to cease pursuing this line of
23 questioning, and then I am going to offer Mr. Merrill in
24 rebuttal to the Agency's case in chief that there was no
25 damages, because Mr. Merrill will testify extensively to the

1 damages as rebuttal.

2 H.O. BROWN: Rebuttal would be the more proper place
3 to offer this evidence.

4 MR. MALONEY: Could you tell me the quality of the
5 grapes that are produced on the San Bernabe vineyard right
6 now? I believe this is covered. Maybe it would be
7 appropriate to point to the paragraphs in Mr. Merrill's
8 testimony so the people can prepare their objection while
9 Mr. Merrill is testifying.

10 H.O. BROWN: That is not necessary unless there is an
11 objection.

12 MR. MALONEY: Could you tell me the nature of the
13 grapes that are being produced on the San Bernabe vineyard?

14 MR. MERRILL: As my testimony states, they are very
15 high quality.

16 MR. MALONEY: Are they as equal or better to the grape
17 production that is being produced throughout the state of
18 California?

19 MR. MERRILL: Yes, they are.

20 MR. MALONEY: Do you farm other -- do you develop
21 other projects in the Monterey County besides the San
22 Bernabe Vineyard?

23 MR. MERRILL: I do.

24 MR. MALONEY: Are you familiar with the extent of
25 Monterey County wine production in acres in Monterey

1 County?

2 MR. MERRILL: Yes.

3 MR. MALONEY: Could you tell me the size?

4 MR. MERRILL: Size is always of some question, rapidly
5 developing industries. Bear with me a second.

6 It is in the 45- to 50,000-acre range, to the best of
7 my knowledge.

8 MR. MALONEY: Could you tell me how many cases of wine
9 it produced in 1999?

10 MR. MERRILL: About 7,000,000.

11 MR. MALONEY: How many cases do you expect it to
12 produce when it reaches full production?

13 MR. MERRILL: Should reach in the vicinity of
14 15,000,000.

15 MR. MALONEY: Could you give me some idea of the
16 wholesale value of this production?

17 MR. MERRILL: Today it is about 375,000,000.

18 MR. MALONEY: Could you tell me how many jobs are
19 created for every 20 acres of new grape production?

20 MR. MERRILL: The rough ratio is one job for every 20
21 acres of new grape production, covering people in the
22 vineyards and the wineries which process the grapes.

23 MR. MALONEY: Are there other jobs created by new
24 vineyard production?

25 MR. MERRILL: Yes. There is equipment sales, various

1 other positions, such as folks to sell the wine and bottles
2 and that type of thing, building trades and so on. There is
3 quite a multiplier effect.

4 MR. MALONEY: Do you have any idea how large the wine
5 production is in Monterey County compared to Napa?

6 MR. MERRILL: Monterey County is a little larger than
7 Napa in 1999. They are -- actually Napa, Sonoma and
8 Monterey are very close in size with I think Napa being a
9 little bit smaller in terms of tons and Sonoma being a
10 little bit larger, but same relative range.

11 MR. MALONEY: Do you have any idea of how large the
12 potential wine production in Monterey County will become if
13 it has water, usable water?

14 MR. MERRILL: I don't think that there is any reason to
15 think that there couldn't be another hundred thousand acres
16 of vineyard land developed in Monterey County, assuming
17 sufficient water and utilizing the land that is ideally
18 suited for wine grapes, potentially.

19 MR. MALONEY: You have looked at a report prepared in
20 1970 about the Napa wine production?

21 MR. MERRILL: Yes, I have.

22 MR. MALONEY: Or vineyard production?

23 MR. MERRILL: Uh-huh.

24 MR. MALONEY: That report showed there was 12,000 acres
25 of vineyard production in Napa in 1970?

1 MR. O'BRIEN: I am going to object about discussion
2 about Napa. I think in your opening ruling, Mr. Brown, you
3 indicated that Napa wine grape production is not an issue in
4 this proceeding. I will be objecting to this consistently
5 throughout this proceeding.

6 H.O. BROWN: Thank you, Mr. O'Brien.
7 Mr. Maloney.

8 MR. MALONEY: Your Honor, we have an expert here on
9 California wine production. What we're trying to find out
10 is how much existing and potential needs for water there
11 will be in the southern part of Monterey County. The best
12 model to find out is to look at exactly how much growth
13 occurred in Napa over a very short period of time, 30
14 years. This agency has had a permit pending for 50 years --
15 for 40 to 50 years. It has done nothing with it. This
16 whole issue can be resolved in terms of the water needs
17 easily over the next 20 to 30 years if the Napa experience
18 applies to Monterey County.

19 Your rulings are very specific. We are not going to
20 talk about reasonableness of use. If you will note in
21 looking at testimony, I am have not gotten into People
22 versus Forni or the active role of the State Water Resources
23 Control Board may play in Napa. All I am trying to do is
24 use the Napa to get some idea of the magnitude of the
25 growth. This is growth of new lands that will basically

1 create approximately 2,500 -- at least 2,500 -- I think -- I
2 know it as 2,500 new jobs or more in the southern part of
3 the county. This all evidence that is clearly admissible
4 under your rulings.

5 H.O. BROWN: I am showing a potential here, Mr.
6 Maloney, but how are you able to show this includes harm?

7 MR. MALONEY: I can show harm on crops. I can show
8 this company spent \$500,000. I can show that they had to
9 cut out the row crop because they had to protect the water
10 for frost protection. They cut out a row crop farmer
11 because they had to cut out to protect the water for frost
12 protection during the spring months when the Agency was
13 holding water that should have been released. I can't do
14 that at this stage. I have to wait for the cross to do
15 that.

16 The second part of it is that we can show harm as to
17 the future development, and we are going to need the water
18 that this agency wants to store, the 27,500 acre-feet,
19 during the frost protection system to refill the aquifers.
20 And if you go back and you look at the original notice of
21 the hearing, one of the things you are supposed to be
22 looking at, one of the things this hearing looks at is what
23 conditions, if any, should the Board adopt to protect senior
24 water rights holders. That is what we are really
25 developing, the nature and extent of the usage.

1 Now, one of the basis --

2 H.O. BROWN: You have another four minutes with this
3 witness. Would that wrap this up again with this witness?

4 MR. MALONEY: I have no further questions at this
5 time. But I would like to remind the Board of Section 1335
6 (c)(3), which states the following:

7 Information concerning Protestants' historical, current
8 or proposed future diversion and use of water that is
9 reasonably necessary to determine if the proposed
10 appropriation will result in injury to the Protestants'
11 exercise of its water rights.

12 We have this broad generic discussion about water
13 rights, which we have no problem living with. We are trying
14 to give you some idea of the extent of the water rights in
15 the Upper Valley that have to be protected.

16 H.O. BROWN: I will permit this and overrule. You have
17 four minutes remaining.

18 MR. MALONEY: You have any -- you're basing -- you
19 project the future growth of the wine industry, of the
20 vineyard production in Monterey County if there is water
21 available to be a hundred thousand acres; is that correct?

22 MR. MERRILL: That's correct, yes.

23 MR. MALONEY: We will go into the red line, that
24 discussion, in cross-examination, Mr. Brown.

25 H.O. BROWN: Okay.

1 Does that complete the questions for this witness?

2 MR. MALONEY: Yes, your Honor.

3 H.O. BROWN: I am going to give a little more time for
4 the lunch break today since you need to review which
5 paragraphs and sentences to be stricken from the evidence.
6 So we will take a lunch break now and reconvene at 1:00.

7 MR. MALONEY: Your Honor, could I find out exactly how
8 much time I have left in my direct?

9 H.O. BROWN: You have 20 minutes for the remaining
10 witness.

11 MR. O'BRIEN: We are talking about time.

12 H.O. BROWN: We are not adjourned, Esther.

13 MR. O'BRIEN: Sorry.

14 It is fairly apparent to me that what we are going to
15 see this afternoon, and I was handed a binder with about 30
16 documents a few minutes ago, is an extensive new
17 presentation that none of us has seen or had a chance to
18 study. I am just going to tell you right now that I am
19 going to propose that at the conclusion of Mr. Maloney's
20 rebuttal presentation that we have opportunity to recess
21 this afternoon and go back and take a close look at that
22 information before we are required to cross-examine.

23 H.O. BROWN: At conclusion of the rebuttal?

24 MR. O'BRIEN: At conclusion of Mr. Maloney's, I will
25 call, case in chief on rebuttal, which is the case in chief

1 in which we will finally see all this evidence of harm that
2 he have been hearing about. I haven't seen that evidence
3 before about ten minutes ago. I would like to have a chance
4 to sit down with my experts and prepare a reliable
5 cross-examination. And so I am just going to warn you right
6 now I am going to make that request at the conclusion of his
7 rebuttal.

8 H.O. BROWN: Thank you, Mr. O'Brien.

9 Anything else before we adjourn for lunch?

10 MR. MALONEY: Mr. Virsik, do you have anything?

11 MR. VIRSIK: No.

12 H.O. BROWN: We will meet here at 1:00.

13 (Luncheon break taken.)

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1 AFTERNOON SESSION

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3 H.O. BROWN: We are back on the record.

4 MR. VIRSIK: Mr. Donlan and I, Mr. Donlan of Tanimura &
5 Antle, Inc., have worked out an accommodation with respect
6 to the testimony of Mr. Scalmanini, which, you can correct
7 me if I misstate, consists of two things.

8 One is that the references as indicated by Mr. Donlan
9 regarding the Salinas Valley Water Project and the seawater
10 intrusion will be stricken from testimony of Mr. Scalmanini.

11 And two, he has offered to have -- for us to continue
12 our cross, and a very short cross, of Mr. Scalmanini that
13 was interrupted subject to the motion to strike if, in fact,
14 that's the Court's pleasure to do so.

15 In lieu of making a decision on the latter half of the
16 motion to strike, I could take Mr. Scalmanini at any point,
17 even right now. I prefer to do it earlier rather than later
18 because of the order of things, that will be the Court's
19 determination.

20 H.O. BROWN: Mr. Donlan, do you agree to a cross of Mr.
21 Scalmanini?

22 MR. DONLAN: Yes, I did. If you would like, I will
23 read into the record the specifics.

24 H.O. BROWN: We need that read into the record and Ms.
25 Katz will need to know some of the specifics about what you

1 have eliminated from the record to be stricken.

2 MR. DONLAN: That is what I was going to read into the
3 record.

4 H.O. BROWN: All right. Go ahead.

5 MR. DONLAN: This is what we agreed to strike add
6 modify.

7 Strike Page 1, Paragraph 2, Sentences 2 and 3.

8 Modified Page 2, Paragraph 1. The first sentence to
9 read, "The purposes of my testimony is twofold."

10 Strike Page 2, Paragraph 1, beginning on Line 6 with
11 the phrase "and three to illustrate that the planned future
12 operation," through the end of that paragraph.

13 Strike Page 3, Paragraph 2, beginning on Line 7 with
14 the phrase, "over the same period of time groundwater
15 levels" through the end of that sentence.

16 Modified Page 6, Paragraph 3, the end of Line 5 to
17 read, "Figure 7 through 12" instead of 7 through 18.

18 We'll strike Page 6, Paragraph 2, Sentences 4, 5, and
19 6.

20 Strike Page 8, Paragraph 4, through Page 9, Paragraph
21 2, ending with the phrase "example, the SVWP."

22 Strike Page 10, Paragraph 2, including and following
23 the heading "The Salinas Valley Water Project" through the
24 end of Mr. Scalmanini's testimony at Page 13.

25 We'll strike Figures 3 and 4, as well as Figures 13

1 through 18. And those figures should also be, I guess,
2 ignored to the extent that they are included on Plat 1 of
3 the hydrography, the pressures in that area.

4 We would like to keep all of the exhibits in the record
5 as well. I don't know that you have an objection to that.
6 The line of questioning that I understand the Salinas Valley
7 Protestants would like to delve into deals with the
8 inclusion of what is known as the Historical Benefits
9 Analysis, Tanimura & Antle Exhibit 5, includes two-page
10 summaries, the purpose of which was to show land use survey
11 studies from 1995. That was the only source of that
12 information.

13 Mr. Scalmanini does not wish to dive into the details
14 of the HBA and it goes well beyond the purpose of his
15 testimony. It is included as our exhibit only for the
16 limited purpose of providing 1995 land use data, and we
17 would like to limit the cross-examination accordingly.

18 H.O. BROWN: That is the terms of your agreement?

19 MR. VIRSIK: I am not agreeing to limit the
20 cross-examination to only the two pages of Historical
21 Benefits Analysis. That is not an agreement, but --

22 MR. DONLAN: That is my understanding, not of the
23 agreement, but of the purpose of the testimony, just for the
24 Board's information.

25 MR. VIRSIK: And whatever questions may be objected to

1 subject to whatever rulings may be occasioned.

2 (Discussion held off the record.)

3 MS. KATZ: Couple of questions for both of you just so
4 we are clear up here.

5 Are we going to get a revised Exhibit 1, or are we just
6 going to modify Exhibit 1 ourselves with what you two just
7 agreed to?

8 MR. DONLAN: I had prepared an Exhibit 1A but there is
9 some typographical errors in there, so I would prefer to
10 leave the record as corrected.

11 MS. KATZ: We won't correct --

12 MR. DONLAN: You will not get another document from
13 us.

14 MS. KATZ: Regarding oral testimony or cross, is that
15 still in the record or what?

16 MR. VIRSIK: Yes. It is our understanding that the
17 oral testimony -- let me make sure I understood your
18 question correctly. The oral testimony on cross-examination
19 is still in the record, yes. I don't think we have any
20 problems on that.

21 MR. DONLAN: Yes. And I think the oral testimony on
22 direct examination, to the extent it can be conformed with
23 your earlier ruling, Mr. Brown, and deletions that we just
24 referenced, I can go back through that and strike and give
25 specific portions of the testimony that we will agree to

1 remove.

2 MR. VIRSIK: I did understand that the oral direct
3 would be coming in because we were traveling, I had thought,
4 on the oral written -- excuse me, as the direct written.

5 MS. KATZ: We are going with the modified --

6 MR. VIRSIK: Written testimony. That is fine. I did
7 not understand we were negotiating about the oral direct.
8 There is an unofficial transcript. If we are going to
9 modify, we can do that, too. I have not heard any
10 suggestions about that. I don't see that as needed.

11 MS. KATZ: That was my question.

12 MR. VIRSIK: That is my understanding, but I can't say
13 that Mr. Donlan --

14 MS. KATZ: Are we going to be striking portions of the
15 oral, I guess, cross-examination?

16 MR. VIRSIK: Direct. My understanding is oral direct.
17 The oral cross would stand because I was going to continue
18 the oral cross-examination briefly today, if at all possible
19 as soon as possible.

20 MR. DONLAN: If the cross-examination is going to
21 stand, then I think we need to go back and conform the oral
22 direct examination. I would be happy to do that.

23 H.O. BROWN: You have those copies delivered to you.
24 So if there is changes in the oral testimony, I think you
25 need to get together, you two gentlemen, and recommend those

1 changes to us.

2 MR. DONLAN: For the purpose of moving forward, can we
3 assume that it is correct, what we have requested will be?

4 H.O. BROWN: If there are no objections. Are there any
5 objections to the changes as notified or as identified?

6 Seeing none, they will be acceptable.

7 MR. DONLAN: I will draft a letter that will reference
8 the strike outs that we will agree to and --

9 MR. VIRSIK: I will respond.

10 H.O. BROWN: That works.

11 MS. KATZ: Make sure we are all --

12 H.O. BROWN: Now you wish to go ahead and cross-examine.

13 MR. VIRSIK: To finish the cross-examination of Mr.
14 Scalmanini which we could do as soon as possible, to get it
15 out of the way.

16 H.O. BROWN: That is permitted right now if it is
17 convenient.

18 ---oOo---

19 CONTINUED CROSS-EXAMINATION OF TANIMURA & ANTLE

20 BY SALINAS VALLEY PROTESTANTS

21 BY MR. VIRSIK

22 MR. VIRSIK: Thank you for coming back so that we could
23 finish this cross-examination. I am going to be brief, only
24 a handful of questions.

25 Where we had left off last week was there was a

1 reference to the Historical Benefits Analysis and at your
2 Exhibit 5 you have included a portion of that Historical
3 Benefits Analysis; is that correct?

4 MR. SCALMANINI: I think so.

5 MR. VIRSIK: I didn't understand.

6 MR. SCALMANINI: I said I think so.

7 MR. VIRSIK: Can you check and make sure that is
8 actually true?

9 MR. SCALMANINI: Yes. There are two pages, appendix to
10 the Historical Benefits Analysis, yes.

11 MR. VIRSIK: So that we are clear about what we are
12 talking about, this Historical Benefits Analysis was a
13 document prepared by Montgomery Watson for the Monterey
14 County Water Resources Agency in 1998.

15 Does this conform with your understanding of what the
16 document was?

17 MR. SCALMANINI: I don't remember the date, but I
18 remember the rest, yes.

19 MR. VIRSIK: Are these two pages in the appendix the
20 only portion of the Historical Benefits Analysis that you
21 reviewed?

22 MR. SCALMANINI: No.

23 MR. VIRSIK: Have you reviewed any other portion of the
24 Historical Benefits Analysis in connection with preparing
25 the testimony at this hearing?

1 MR. SCALMANINI: No.

2 MR. VIRSIK: Do you recall -- well, let me show you,
3 and this will be part of the -- for purposes of reference so
4 the record is clear as to what I will be showing Mr.
5 Scalmanini the Salinas Valley Protestants have included a
6 portion of the Historical Benefits Analysis in their binder
7 of material at Tab 41, so we know what we are looking at.

8 Mr. Scalmanini, instead I will give you a copy of the
9 document, and Executive Summary, Page 1.

10 Mr. Scalmanini, could you agree with the statement --
11 actually, if you can turn to, I am sorry, Page ES-3,
12 Executive Summary 3, in the right-hand-column under the
13 heading that says "groundwater levels," do you agree with
14 the analysis, in your engineering perspective, that a total
15 of 30,000 acre-feet per year of fresh groundwater has been
16 added to the groundwater storage through recharge from
17 Salinas River as a result of operation of the reservoirs
18 during water years 1958 through 1994?

19 MR. SCALMANINI: I only say I agree in the sense I
20 don't disagree. I don't disagree. I didn't do an
21 independent analysis to agree or disagree with the numbers.

22 MR. VIRSIK: The reservoirs they are speaking of, we
23 can agree that those are the Nacimiento and San Antonio; is
24 that correct?

25 MR. SCALMANINI: That's correct.

1 MR. VIRSIK: Mr. Scalmanini, I believe you also
2 submitted by way of reference Bulletin 52 among your
3 exhibits; is that correct?

4 MR. SCALMANINI: I don't think we submitted it; I think
5 we referenced it.

6 MR. VIRSIK: You asked for it to be made a part of your
7 exhibits by reference to the actual document.

8 MR. SCALMANINI: Yes.

9 MR. VIRSIK: Is that correct?
10 Are you familiar with Bulletin 52?

11 MR. SCALMANINI: In general.

12 MR. VIRSIK: That forms part of your testimony on which
13 you are basing your historical conclusions, doesn't it?

14 MR. SCALMANINI: Let's see. Given what you've deleted,
15 there might be some land use data in Bulletin 52 on which we
16 relied for 1940s land use in the valleys. Other than that,
17 I don't think I used it for anything that is left in the
18 testimony.

19 MR. VIRSIK: Do you have any basis on which to disagree
20 with the statement in Bulletin 52 that at that time of its
21 creation there was no overdraft in -- excuse me, let me be
22 specific. That at the time of its publication the only
23 overdraft on groundwater in Salinas Valley is in the East
24 Side and Pressure areas?

25 MR. SCALMANINI: Well, I explained some of that the

1 other day, that the areas that you just mentioned were
2 subdivisions of the valley for, I think Bulletin 52 used the
3 term, analytical purposes. They were specifically not to be
4 confused with subbasins.

5 And so to characterize a portion of the valley as being
6 in overdraft and the other portion of the same basin as not
7 being in overdraft, that would not be how I would do it. So
8 I wouldn't agree with some of their representations that
9 came up. Maybe how the terms were used in the 1940s, but it
10 is not how the terms are used today.

11 MR. VIRSIK: Do you -- presently do you believe there
12 is an overdraft in the Salinas Valley basin?

13 MR. SCALMANINI: Yes.

14 MR. VIRSIK: Do you have an opinion as to
15 geographically where the overdraft exists?

16 MR. SCALMANINI: In the basin.

17 MR. VIRSIK: Do you have any more specific opinion
18 other than the entire basin?

19 MR. SCALMANINI: Using the definition of overdraft
20 which I have provided in response to a question the other
21 day, I would say the overdraft extends throughout the whole
22 basin.

23 MR. VIRSIK: Just so that we are clear about all of
24 this, do you define the basin in the same way that the
25 Agency has defined the basin? In other words the lines of

1 Agency Exhibit 2-5, which I can show you my board black and
2 white copy to refresh your recollection if need be.

3 MR. SCALMANINI: Why don't you do that.

4 MR. VIRSIK: Just again to refresh your recollection,
5 when this was on the board my recollection was that there
6 was lines during Mr. Taghavi's exhibit, were the heavy red
7 lines of that particular exhibit.

8 MR. SCALMANINI: This is the Agency's Exhibit 2-5 which
9 apparently depicts the Salinas Valley, such as the, call it
10 a, dark line surrounds what is commonly known as the
11 groundwater basin. Then I will say that my definition of
12 the basin and the one you are using are the same or close to
13 it. I wouldn't argue it is exactly the same as these lines,
14 but close.

15 MR. VIRSIK: Is there any specific part of the basin
16 that you would disagree with based on, understanding, of
17 course, that the scale on that particular map in front of
18 you may or may not be the best in the world, is there a
19 specific area in which you do, in fact, disagree with the
20 Agency's representation of the Salinas Valley basin?

21 MR. SCALMANINI: Nothing that is overly obvious from
22 looking at that exhibit.

23 MR. VIRSIK: During the course of your historical
24 review in preparation for your testimony, did you discover
25 that the northern end of the Salinas Valley was reclaimed in

1 the early 20th century?

2 MR. SCALMANINI: No.

3 MR. VIRSIK: Did you discover that any portion of the
4 Salinas Valley was reclaimed in the early 20th century?

5 MR. SCALMANINI: No, I didn't look that far back.

6 MR. VIRSIK: I am sure you testified on direct, could
7 you just let me know again how far back did you review the
8 history of Salinas Valley?

9 MR. SCALMANINI: The primary focus of my review was,
10 say, from generally pre-reservoir to post-reservoir, and
11 there I mean Nacimiento as the first reservoir. So from
12 generally speaking about the early to mid 1940s through to
13 the present. The present being, roughly speaking, mid
14 1990s. Recognizing that Nacimiento was put in service in I
15 recall the late 1950s, 1957.

16 MR. VIRSIK: Did you look at any -- did you rely on
17 works that were published prior to Bulletin 52?

18 MR. SCALMANINI: Not that I recall.

19 MR. VIRSIK: What was the latest in time work that you
20 relied upon in formulating your testimony about the history
21 of the Salinas Valley?

22 MR. SCALMANINI: Published work?

23 MR. VIRSIK: Published work.

24 MR. SCALMANINI: I don't remember for sure in terms of
25 sequence of publications.

1 MR. VIRSIK: And you stated that your analysis was
2 through the mid 1990s. Is there any reason why it did not
3 go forward to the present day?

4 MR. SCALMANINI: In part the analysis was based on an
5 observation of land use which was last, call it, surveyed
6 and reported in those two appendix pages we talked about a
7 few minutes ago and the Historical Benefits Analysis. I
8 think that was 1995. And we had, as summarized in my
9 testimony, we used groundwater level data which came into
10 the mid to late 1990s but used available data as far as it
11 was available at that point in time.

12 So, in trying to be somewhat consistent between various
13 pieces of available data in the three subject areas, in my
14 testimony came as far forward, basically, as the land use
15 data that was last summarized in the mid 1990s. That is the
16 limiting date.

17 MR. VIRSIK: That is all I have.

18 H.O. BROWN: Any redirect?

19 Mr. Maloney, are you rising?

20 MR. MALONEY: No.

21 H.O. BROWN: Mr. Donlan, you have any redirect on that
22 testimony?

23 MR. DONLAN: Would it be proper to ask Mr. Scalmanini
24 to resummarize the purpose of his testimony, given there has
25 been a week when he started and when he just concluded?

1 H.O. BROWN: It is your call. You get a chance to
2 redirect and they get a chance to recross. I should have
3 asked the other parties if they have any cross.

4 MR. O'BRIEN: No.

5 H.O. BROWN: Staff, do you have any?

6 All right, now.

7 MR. DONLAN: I'll withdraw the question. There is no
8 redirect.

9 H.O. BROWN: Thank you, Mr. Scalmanini.

10 You are back up on direct, Mr. Maloney.

11 MR. MALONEY: Could I bring my two witnesses back?

12 H.O. BROWN: Sure.

13 MR. MALONEY: I would like to ask a quick follow-up
14 question of Mr. Merrill, which I found out over the lunch
15 break. I don't know if it is going to be acceptable. I
16 would like to make an offer of proof on the issue.

17 H.O. BROWN: Go ahead.

18 MR. MALONEY: In your statement here you make this idea
19 that you would be very upset -- and let me get the exact
20 words so we don't have any problem -- that you would find
21 any control over Nacimiento to be -- the waters held back by
22 Nacimiento Dam to be objectionable.

23 What do you mean by saying something would be
24 objectionable? Did it cost you money or something, why did
25 you say that?

1 MR. MERRILL: It is objectionable because it limits the
2 recharge of the aquifers from which our wells pump water,
3 certainly appears to do that. And it manifests itself in
4 terms of limiting the quantity of water. But also we spent
5 -- causes us to spend a lot more money in the operation of
6 our system, just from well repairs to having to build
7 auxiliary pipelines and even cancelling the row crops leases
8 to divert the water to permanent crops.

9 MR. MALONEY: Do you have any idea how much more money
10 you'd have to spend before it becomes objectionable?

11 MR. MERRILL: Well, it is a question of whose ox is
12 being gored. The first dollar is objectionable as far as I
13 am concerned. If it is not justified that we have to spend
14 it, and we were -- I think it can be --

15 I think that we can document well in excess of \$300,000
16 worth of damage, notwithstanding the fact that you should
17 also put a risk of -- value of risk itself. When our frost
18 capacity is compromised, you have an annual risk factor of
19 \$30,000,000 crop each and every season if we don't have
20 frost protection water. So if you are lucky, you know, the
21 exposure doesn't result in a loss. If you are not so lucky,
22 you lose \$30,000,000 worth of revenues in about five
23 minutes. That is all it takes. It doesn't take much.

24 MR. MALONEY: I think that covers the word
25 "objectionable" as set forth in the direct.

1 Next in order would be Mr. Pyle.

2 Mr. Pyle, this is the first time you have testified

3 before the State Water Resources Control Board?

4 MR. PYLE: That's right.

5 MR. MALONEY: A little nervous; aren't you?

6 MR. PYLE: Not really.

7 MR. MALONEY: Not really, well, I am.

8 You are a registered geologist and a certified

9 hydrologist; is that correct?

10 MR. PYLE: That's correct.

11 MR. MALONEY: You are employed by Stetson Engineers?

12 MR. PYLE: Right.

13 MR. MALONEY: You submitted your resume in connection

14 with this testimony in chief which you reviewed before you

15 testified here today?

16 MR. PYLE: Right.

17 MR. MALONEY: Are there any corrections you would like

18 to make in this testimony in chief?

19 MR. PYLE: No.

20 MR. MALONEY: You swore under penalty of perjury this

21 is factually correct?

22 MR. PYLE: Right.

23 MR. MALONEY: Could you give us a brief background of

24 your education background?

25 MR. PYLE: I have a Bachelor's degree in geology and a

1 Master's degree in engineering both from the University of
2 California.

3 MR. MALONEY: Have you conducted any hydrological --
4 are you familiar with the Salinas Valley?

5 MR. PYLE: Yes, I am.

6 MR. MALONEY: Have you conducted any hydrologic
7 analysis in the Salinas Valley in the last five years?

8 MR. PYLE: Yes, I have.

9 MR. MALONEY: To this end have you prepared the
10 following maps?

11 MR. PYLE: Yes.

12 MR. MALONEY: Could you please describe for me map
13 number one, Exhibit Number 1, and how you prepared that
14 map?

15 MR. O'BRIEN: Excuse me, Mr. Pyle.

16 H.O. BROWN: You have an objection, Mr. O'Brien?

17 MR. O'BRIEN: I think these are the maps that we
18 received this morning in connection with the rebuttal
19 testimony.

20 Am I correct about that?

21 MR. MALONEY: No, you are totally wrong, Mr. O'Brien.
22 You're totally wrong. These maps were mailed to you in
23 connection with our original evidence submitted.

24 MR. O'BRIEN: Could we have an exhibit number?

25 MR. MALONEY: Exhibit 1.

1 H.O. BROWN: Is that the -- are you satisfied with
2 that, Mr. O'Brien?

3 MR. O'BRIEN: Yes, I am. Upon Mr. Maloney's
4 representation that this is Exhibit 1.

5 H.O. BROWN: Proceed, Mr. Maloney.

6 MR. MALONEY: Any more objections? I just want to
7 make sure we have them all covered.

8 Why don't you get up and explain how you prepared that
9 map, Mr. Pyle. First map, Exhibit 1.

10 MR. PYLE: This is a map entitled "Pre-1914 Recorded
11 Water Rights Claims Affecting Protestants Property, Salinas
12 Valley."

13 And it shows, first of all, a general outline of the
14 valley, an outline of the pre-1914 water rights claim based
15 on records on file at the Monterey County that were provided
16 to us.

17 MR. O'BRIEN: Excuse me, Mr. Brown.

18 H.O. BROWN: Mr. O'Brien, you rise.

19 MR. O'BRIEN: I apologize for interrupting.

20 We may as well deal with the evidentiary issue now
21 rather than later. In the original set of rulings by the
22 Hearing Officer to start the hearing, it was my
23 understanding that -- one of the rulings was that we are not
24 going to get into individual claims of individual water
25 rights.

1 I think what we are about to hear now is some testimony
2 regarding these claims to pre-1914 water rights by various
3 members of Mr. Maloney's client group. I don't believe
4 those claims are relevant to this proceeding. This is going
5 to greatly complicate this proceeding if we are all forced
6 into having to cross-examine Mr. Pyle and others relating to
7 the background and validity of these claims. It simply goes
8 way beyond the scope of this hearing. We've argued this
9 issue several times already.

10 H.O. BROWN: Thank you, Mr. O'Brien.

11 Mr. Maloney.

12 Ms. Lennihan.

13 MS. LENNIHAN: I apologize. I would like to join in
14 that motion with respect to the scope of the hearing which
15 has previously been addressed.

16 H.O. BROWN: Thank you, Ms. Lennihan.

17 MR. MALONEY: Your Honor, there is a couple things that
18 are very interesting. We spent 30 minutes hearing about the
19 water rights of Clark Colony. And now all we are trying to
20 do is show the pre-1914 rights in gross of the Upper Valley
21 and showing that all of these pre-1914 rights, as set forth
22 in our exhibits, apply to lands in the Upper Valley. And
23 all I am trying to do is get the identification of the scope
24 and the extent of the pre-1914 rights as set forth in the
25 water rights book of the County of Monterey. That is the

1 only purpose of showing this evidence at this particular
2 point in time. We are not going to -- at this particular
3 point in time.

4 H.O. BROWN: Thank you, Mr. Maloney.

5 Mr. O'Brien.

6 MR. O'BRIEN: I would just add to my relevance
7 objection an objection as to lack of foundation as to the
8 basis for the information portrayed on the map. We don't
9 have any evidence in the testimony of Mr. Pyle as to where
10 this information came from, how reliable it is, for his
11 qualifications to compile information of this type.

12 MR. MALONEY: I am about to qualify him on that, your
13 Honor.

14 H.O. BROWN: All right.

15 (Discussion held off the record.)

16 H.O. BROWN: Mr. Maloney, explain to me where you are
17 headed with this.

18 MR. MALONEY: All I am really interested in is
19 establishing the fact there are significant pre-1914
20 recorded water rights throughout the whole Upper Valley and
21 Forebay. I am not interested in individual identifications.
22 I am just interested in bringing out the right.

23 We had previous testimony about the extent and scope of
24 this Clark Colony water right that nobody objected to. All
25 we are trying to do is offer the scope and extent of what we

1 believe to be based on a careful analysis of historical
2 record of the historical -- of the recorded pre-1914 water
3 rights.

4 We are more than willing to stipulate, to offer a
5 stipulation, that we have water rights, that if the Agency
6 will stipulate that we have water rights, pre-1914 recorded
7 water rights, that can be harmed, our landowners are more
8 than willing to agree to that stipulation, and not go into
9 this evidence. If they are not, this is in gross what the
10 valid pre-1914 water rights, in our opinion, show, and in
11 the county records of the County of Monterey.

12 These are very types of rights that we believe that Mr.
13 Satkowski asked that the Agency discuss. The Agency did not
14 discuss these rights, and now we have to put this evidence
15 on ourselves. And this evidence is based on the testimony
16 or will be, so the record is clear on this, on typewritten
17 translations of the handwritten water rights in the water
18 right book of the County of Monterey. And Mr. O'Brien is
19 fully aware of these handwritten translations, and they were
20 sent to him about two to three weeks ago. And he indicated
21 by return mail that he would not object to the -- he
22 reserved his right to object to the typed description of the
23 water rights.

24 Mr. Pyle's testimony will be that he relied on our
25 typed descriptions of the water rights that appeared in the

1 water rights book of the County of Monterey. Furthermore,
2 if we had the water rights book here, it would be a lot
3 easier to read the copies. We will make copies available of
4 the actual water rights document that appear in the County
5 of Monterey's books.

6 H.O. BROWN: Mr. Bezerra, you rise.

7 MR. BEZERRA: Yes. I'd just like to point out that I
8 think that there this is a significant difference between
9 this testimony and the testimony of Clark Colony and
10 Rosenberg Family Ranch. Clark Colony and the Rosenberg
11 Family Ranch were simply trying to demonstrate that their
12 water rights were not among those of the Salinas Valley
13 Protestants. This overall production of water rights
14 information is very different than the specific information
15 that we produced in relation to who can and cannot take
16 actions on behalf of Rosenberg Family Ranch and Clark
17 Colony.

18 H.O. BROWN: Mr. O'Brien.

19 MR. O'BRIEN: First of all, I think the testimony
20 relating to Clark Colony was mostly elicited by Mr. Maloney
21 in his own cross-examination.

22 Secondly, there is a significant potential for
23 confusion and prejudice if this evidence comes into this
24 record, because the issue of which rights Mr. Maloney's
25 clients do or don't have is simply not an issue in this

1 proceeding. But if it becomes an issue, then as you have
2 heard previously from other parties, that is going to
3 greatly prolong this proceeding.

4 There is simply no need to present this evidence. And
5 my concern is that we are now going to hear testimony
6 relating to some apparent filings that exist in the county
7 records of Monterey County, and from that evidence we are
8 going to be asked to make the leap, which I have already
9 heard, that these are valid water rights. As this Board
10 knows, there is a big difference between filings in county
11 record books relating to pre-1914 claims and the validity of
12 water rights. And it is that jump that I am most concerned
13 about.

14 H.O. BROWN: Thank you, Mr. O'Brien.

15 MR. MALONEY: May I respond, your Honor?

16 H.O. BROWN: Last word, Mr. Maloney.

17 MR. MALONEY: The County of Monterey knows full well
18 the basis on which we are claiming these to be valid water
19 rights. We supplied them with hundreds of pages of
20 information on the basis on which we are claiming these are
21 valid water rights.

22 If we can't show this appropriation, how do we have
23 standing to be here? One of the issues you are trying to
24 determine is whether or not our water rights have been
25 interfered with or will be interfered with under this

1 proposed application.

2 The final thing is we are not trying to say we have
3 better rights than everybody else or anything else. We have
4 different rights. We are just saying there is an extensive
5 amount of water rights that have been filed pursuant to the
6 1872 Act in the Salinas Valley. We can show extensive
7 evidence of development of projects pursuant to these water
8 rights. Possibly if we had the book here we'd see there are
9 hundreds of water rights filed in this Salinas Valley, and
10 you will note we only have 22 water rights that we believe
11 relate, valid water rights, based on the historical record,
12 which we made reference to in our filings already.

13 We need to put -- start establishing the fact that the
14 Upper Valley has vested rights that are pre-1914 nature that
15 are superior to any rights which the applicant may have. In
16 addition, once we have the basis of this information, we
17 then will be able to make the argument that water from these
18 pre-1914 rights can be transported to areas of potential
19 development.

20 H.O. BROWN: Ms. Lennihan.

21 MS. LENNIHAN: Mr. Brown, I think you did hear earlier
22 quite extensively the concerns of my clients and some of the
23 other groups not wanting at all to be put in the position of
24 having to examine Mr. Maloney's clients' water rights, put
25 on our own water rights cases or otherwise start

1 adjudication.

2 Mr. Maloney has said he is not interested in
3 adjudicating. And I wonder if it might be possible to go
4 back to a motion or request for prehearing order the Agency
5 made that might structure this so that we don't prejudice
6 anybody's interests. And my recollection is that it was
7 something along the lines if they show injury to water use,
8 or they don't show injury to water use, you never get to the
9 water rights question.

10 I would submit that you can structure this proceeding
11 so Mr. Maloney has a full opportunity to get to the hearing
12 issue, which is injury, and we may never even have this
13 debate over water right.

14 We do strongly object to the introduction of water
15 rights evidence.

16 H.O. BROWN: Thank you, Ms. Lennihan.

17 I don't intend to change my initial ruling on that
18 suggestion, although it was a good suggestion. The
19 disadvantage at this point in time outweighs it.

20 I am going to sustain the objection, Mr. Maloney. I
21 don't want to go in this course. I don't want to turn this
22 into a water rights proceeding.

23 MR. MALONEY: We don't consider this --

24 H.O. BROWN: The objection is sustained.

25 MR. MALONEY: Can you tell me how you -- can I make an

1 offer of proof of what we will be able to show at this
2 point?

3 H.O. BROWN: With regards to?

4 MR. MALONEY: This particular map.

5 H.O. BROWN: Go ahead.

6 MR. MALONEY: In preparing this map, Exhibit No. 1, is
7 it correct that you reviewed certain typewritten
8 descriptions of the water rights, and in particular Proposed
9 Exhibit No. 40? I am showing you Proposed Exhibit 40.

10 MR. PYLE: Yes, that is correct.

11 MR. MALONEY: These are handwritten -- these were
12 typewritten descriptions of the water rights that are set
13 forth in proposed Exhibit No. 32 which are copies of the
14 records in the Monterey County of the water rights book. I
15 am putting that as an offer of proof as well, your Honor.

16 And then, secondly, when you were drafting the
17 locations of use of these water rights, could you explain
18 how you drafted locations of use for the record?

19 MR. O'BRIEN: Mr. Brown, I don't know what kind of
20 offer of proof this is. An offer of proof is generally
21 offered by counsel as to what he will be eliciting in the
22 form of evidence. He is now moving back into the
23 examination of the witness after your ruling. He can
24 certainly make an offer.

25 MR. MALONEY: I can do it quicker if you want me to.

1 H.O. BROWN: You do it, Mr. Maloney.

2 MR. MALONEY: Basically, the engineer in preparing this
3 map relied on Exhibit 40, which basically is the typed
4 description of the water rights that are set forth in
5 Exhibit No. 32 which were copies of documents that appear in
6 the County of Monterey's water rights book. And in
7 preparing the areas of use in the water rights he only
8 showed areas of use that were downstream from the points of
9 diversions.

10 That is my offer of proof as to this map.

11 Secondly, on that map you are showing client land; is
12 that not correct, in green?

13 MR. PYLE: Yes, that is correct.

14 MS. LENNIHAN: Objection.

15 MR. O'BRIEN: I move to strike. This testimony is over
16 your previous ruling. It should be stricken.

17 MR. MALONEY: Can I respond?

18 H.O. BROWN: Are you through, Mr. O'Brien?

19 MR. O'BRIEN: Yes, I am.

20 H.O. BROWN: When you need to object, please stand so I
21 can recognize you. We can have only one speaking at a time.

22 Mr. Maloney.

23 MR. MALONEY: All I am going to do is -- there are
24 other purposes to the map, other than the water rights, and
25 I am offering the map for the other purposes. It is my

1 assumption the Board will disregard the water rights as set
2 forth on the map.

3 H.O. BROWN: The purpose of offering the map now is to
4 show the location of your clients?

5 MR. MALONEY: Yes, your Honor.

6 H.O. BROWN: Do you object to this?

7 MR. O'BRIEN: I don't know how in this map you
8 segregate out the water rights filings from the location of
9 his clients' land. Maybe someone could explain that. It
10 looks to me like the water right claim areas are marked in
11 green.

12 MR. MALONEY: I don't think so.

13 MR. O'BRIEN: Apparently the Protestants' lands are
14 marked in green. I don't know how you admit the document
15 without also admitting his red line, which is purportedly
16 the vested rights boundary line. I don't think you can
17 separate out one element of this map from the other.

18 MR. MALONEY: Your Honor, can I respond?

19 We haven't talked about the vested rights water line at
20 all. That is going to be offered at a later date. We are
21 dealing with very sophisticated people here. I see no
22 problems in the sophisticated people ignoring the black line
23 which is the claim boundary.

24 H.O. BROWN: It seems to me like the qualifications of
25 what this map represents is pretty well described.

1 Is there an objection to those qualifications that is
2 now on the record?

3 MR. O'BRIEN: As long as the record is clear,
4 Mr. Brown, that in no way, shape or form does the red line
5 depicted on that map have any meaning or significance in
6 this proceeding.

7 MR. MALONEY: Wait a minute. We haven't gotten to the
8 red line yet, your Honor. We are only on the black line.
9 Let's not get ahead of ourselves. We will get to the red
10 line, and then we will have full discussion of it.

11 H.O. BROWN: Mr. O'Brien.

12 MR. O'BRIEN: This illustrates the problem of trying to
13 take an exhibit, which you have now ruled is admissible, and
14 trying to take pieces out of it and admit it into the
15 record.

16 I will stipulate with Mr. Maloney, if he listens --

17 MR. MALONEY: I am listening.

18 MR. O'BRIEN: -- that if he wants to submit another map
19 with only the outline of his clients' lands, I have no
20 problem with that coming into this record, and he can do
21 that after this hearing is concluded, with my stipulation.
22 So long as there is no water rights information on that.

23 H.O. BROWN: Mr. Bezerra.

24 MR. BEZERRA: Yes, Mr. Brown, I would like to point out
25 that at least the copy of Exhibit SVP-1 that I received was

1 not this map, but an eight and a half reduction of this map
2 in black and white with some dark lines and some dotted
3 lines and some dashed lines. I couldn't make a lot of sense
4 out of it. And if we are going to start making distinctions
5 based on what color the lines on this map are, I would
6 strongly object to that because I don't know where those
7 color lines are.

8 H.O. BROWN: Mr. Maloney, did you hear the suggestion
9 by Mr. O'Brien that he would stipulate to your map as
10 proposed if you submitted a revision without any reference
11 to the water rights?

12 MR. MALONEY: He wasn't saying that, your Honor. I
13 don't have any problems taking out the water rights. But I
14 want to keep that in the record. I want to keep this
15 particular map in the record so we can show we are not
16 allowed to offer testimony on this map. That is the only --
17 we can present another map.

18 We are now going to talk about the red lines in the
19 discussions before we make any decision about what to do
20 about maps. We can submit any kinds of maps you want, if
21 that is what the Court wants. We still want this map as
22 part of the record.

23 H.O. BROWN: Mr. O'Brien, can this map be qualified, in
24 your mind, some way to where you would be satisfied verbally
25 with qualifications?

1 MR. O'BRIEN: No. I think what Mr. Maloney is saying
2 is that this map needs to remain in the record although not
3 admitted into evidence. So that if he seeks review at some
4 later date of a variety of ruling, he can have this map in
5 the record. I have no problem with that as long as it is
6 clear that this map does not come into evidence.

7 Secondly, if he wants to have another map with --

8 H.O. BROWN: Wait a minute. You are all right to have
9 it in the record, but you don't want it admitted as evidence?

10 MR. O'BRIEN: Correct.

11 H.O. BROWN: Would that satisfy you?

12 MR. MALONEY: Well, I have further questions I want to
13 ask about this particular map.

14 H.O. BROWN: I understand that. We are talking about
15 the water rights portion of it right now.

16 MR. MALONEY: Water rights portion, that perfectly
17 satisfies me. I thought that was already over with.

18 H.O. BROWN: Mr. O'Brien, is it all right with you?

19 MR. O'BRIEN: I just want to make clear that this map,
20 Exhibit 1, will not be used in the evidentiary record in
21 this proceeding.

22 H.O. BROWN: When it comes to the admission of exhibits
23 into evidence, you will stand and make sure that that is not
24 included in.

25 MR. O'BRIEN: I will stand again. I think we are

1 getting into Pandora's box here, though, Mr. Brown, if we
2 are now going to let him question his witnesses about this
3 map, based on your earlier ruling.

4 If what he is trying to do is get evidence in the
5 record about where his clients' lands are located, I have no
6 problem with that. We can have him produce a new map with
7 just the green outlines, and that comes in and that is -- we
8 are done with it.

9 My concern here is we are having to spend time where he
10 is going to attempt to circumvent your ruling in an attempt
11 to elicit more testimony from his witnesses about the water
12 rights claims and theories. I think that is a huge waste of
13 time.

14 H.O. BROWN: Mr. Maloney, I concur here.

15 MR. MALONEY: I just want you to understand what I have
16 on this map at this stage.

17 H.O. BROWN: Mr. Maloney, I don't like the direction we
18 are headed here. We are becoming very argumentative with
19 relationship to water rights, and I don't want to do that.
20 That is not what we are here for.

21 MR. MALONEY: I understand that, your Honor.

22 H.O. BROWN: I am going to sustain the objection.

23 Please move on.

24 MR. MALONEY: When I give a map, can I give township
25 and ranges so we will know the relative location of clients'

1 property?

2 MR. O'BRIEN: That is fine.

3 H.O. BROWN: Any objection to that?

4 MR. O'BRIEN: No objection.

5 MR. MALONEY: Second question, could you tell us how
6 you constructed the green -- the red line on this particular
7 map?

8 MR. O'BRIEN: Same objection.

9 MR. BEZERRA: Objection.

10 MR. MALONEY: I would like to make an offer of proof.
11 You have to rule on the objection first.

12 H.O. BROWN: Tell me what your objection is.

13 MR. O'BRIEN: Well, Mr. Brown, I thought you ruled on
14 this twice now. This map, other than the green area, is
15 inadmissible. We keep going back to it.

16 H.O. BROWN: What do you want to do, Mr. Maloney?

17 MR. MALONEY: I want to find out if I can put the red
18 lines on the map that would be admissible.

19 H.O. BROWN: The red line is the water rights?

20 MR. MALONEY: No, has nothing to do with water rights.

21 H.O. BROWN: What is the red lines?

22 MR. MALONEY: The red line is the vested water rights
23 -- excuse me, I'd forgotten. I can't remember what -- the
24 vested rights boundary or another name, land that might have
25 an entitlement, might, might have an entitlement or reason

1 to use water in the very broad basis. I will make an offer
2 of proof as to how that line was found and was drawn at the
3 instruction of my office by Mr. Pyle.

4 H.O. BROWN: I have already ruled on that, Mr. Maloney.
5 I don't wish to change my mind.

6 MR. MALONEY: May I make an offer of proof?

7 H.O. BROWN: On my ruling that I just made?

8 MR. MALONEY: On the red, on how the red line was
9 constructed.

10 H.O. BROWN: No, Mr. Maloney.

11 MR. MALONEY: I cannot make an offer of proof?

12 H.O. BROWN: No.

13 MR. MALONEY: Thank you.

14 Next map please.

15 H.O. BROWN: Engineers hate to see those maps wrinkled.
16 Right, Mr. Scalmanini?

17 MR. SCALMANINI: I agree.

18 MR. MALONEY: Mr. Pyle, could you explain how this map
19 was constructed?

20 MR. PYLE: This map entitled "Protestants' Lands and
21 Soil Types" shows a portion of the Protestants' lands and
22 soil type which we digitized from the SCS soil survey for
23 Monterey County. It also shows two colors. In brown is
24 soil type Classification 6 through 8, and in green is Class
25 1 through 4.

1 MR. MALONEY: You have any opinion about soil types?

2 MR. PYLE: Class 1 through 4 generally considered to be
3 irrigatable lands.

4 MR. MALONEY: Did you do any analysis when you were
5 preparing this map of the soil types within the area that is
6 commonly referred to as Zone 2A or has probably been
7 referred to as the zone -- as the area within the red lines
8 on, I believe it is, Monterey, the Agency's Exhibit 5.5?
9 Did you do any analysis of the soil types within that area?

10 MR. PYLE: Well, since that is not on this map, I --
11 for our calculations, which I think we'll be discussing
12 later, we excluded Zone 2A.

13 MR. MALONEY: Will the Agency at this point enter into
14 a stipulation that reflects the following facts: There are
15 approximately 30,000 acres south of Gonzales which the
16 Agency has classified as nonirrigated farming land on its
17 tax role? This is a public record. Will the Agency enter
18 into that stipulation?

19 MR. O'BRIEN: No.

20 MR. MALONEY: Okay. Thank you.

21 Now, could you tell me what Exhibit 3 shows?

22 MR. PYLE: That is not --

23 MR. MALONEY: That is not Exhibit 3.

24 MR. PYLE: Exhibit 3 is entitled "Modified 1989-91 Land
25 Use Within Protestants' Land." It shows a distribution of

1 crops within the Protestants' lands and within those lands
2 only.

3 MR. MALONEY: I think we should show for the record
4 that this map has some later added hatch marks covering the
5 Rosenberg property, and no claim is being made in connection
6 with those water rights. You can also show on the record
7 that it is not reflecting a property zoned in tenants in
8 common between Ms. Duflock's boundary and Mr. Rosenberg's
9 family, and I think we should also show that on behalf of
10 the Samento property as being on -- that is removed from the
11 map.

12 H.O. BROWN: All right.

13 Mr. Bezerra.

14 MR. BEZERRA: Mr. Brown, I would just like the
15 opportunity to take a look at this map and cross-hatching at
16 some point. I've never seen it and obviously that is of
17 great concern to the Rosenbergs, what property is and is not
18 cross-hatched on this map.

19 Second, I would like to point out again is that this
20 once again a color map and that the exhibit sent to the
21 parties here at the appropriate time was a black and white
22 reduction of this map. I personally can't follow the black
23 and white reduction in relation to this map.

24 H.O. BROWN: We are having the same problem with the
25 black and white production. We will take a five-minute

1 recess for those who would like to come up and look at the
2 map and do it and go with the questions.

3 We will go off the record for a few minutes, Esther.

4 (Break taken.)

5 H.O. BROWN: We will come back to order.

6 MR. MALONEY: Mr. Virsik had discussion with Mr.
7 Rosenberg.

8 MR. VIRSIK: Mr. Rosenberg still requested to reiterate
9 that on this color map is approximately four parcels towards
10 the bottom section of that map which carries some
11 cross-hatching done by hand over the colored portion which
12 is the Rosenberg property which we are cross-hatching at the
13 present time to conform the exhibit to the fact that those
14 lands are not to be included with the Salinas Valley
15 Protestants when putting this on the record as requested by
16 Mr. Rosenberg.

17 H.O. BROWN: We have that on the record now.

18 MR. MALONEY: In connection with this map, you were
19 supplied with information by my office to create current
20 lands usage; is that correct?

21 MR. PYLE: That's correct.

22 MR. MALONEY: To the best of your knowledge, that is
23 current land usage; is that correct?

24 MR. PYLE: Yes.

25 MR. MALONEY: In the native vegetation, in the area

1 identified as native vegetation, do you have any reason to
2 believe that could be turned into irrigated agriculture?

3 MR. PYLE: I have no opinion on that.

4 MR. MALONEY: I have made it as clear as I can to Ms.
5 Katz, and I think I should make it clear for the record that
6 these clients, to our knowledge, have long-term leases and
7 have control over water rights through easements, et cetera.
8 On this particular map there may be some Etchenique property
9 that we don't have any long-term leases, but we have certain
10 types of water easements. We did not believe it was
11 appropriate because this is not an adjudication to go into
12 all the issues as to the scope and extent of the easement at
13 this particular forum. We can do that if the Board so
14 wishes.

15 I think it would be beyond the scope of the hearing if
16 that is required.

17 H.O. BROWN: Thank you, Mr. Maloney.

18 MR. MALONEY: Let's look at the next map.

19 Now, could you tell me what -- first, could you tell me
20 what this map shows?

21 MR. PYLE: This map is entitled "Slope of Land above
22 the Salinas Valley Floor." It shows in red and in green
23 and in blue the slope of land outside the Salinas Valley
24 floor but within the Salinas Valley watershed. We excluded
25 government lands there in that beige shade.

1 The green land is zero to 15 percent slope. Dark blue
2 is 15 to 30, and the pink is greater than 30 percent.

3 MR. MALONEY: You have something called -- at the top
4 of the map you have something called Drainage Basin
5 Boundary. Could you describe, tell me what that is?

6 MR. PYLE: That is the very outside boundary there. In
7 black that shows the boundary of the Salinas Valley
8 drainage. That is water that would fall within the -- water
9 falling within that boundary would flow toward Salinas
10 Valley.

11 MR. MALONEY: Do you know where you got that data?

12 MR. PYLE: That is a USGS boundary that we got
13 digitally from them.

14 MR. MALONEY: From where?

15 MR. PYLE: From USGS.

16 MR. MALONEY: That is an undisputed boundary developed
17 by the USGS; isn't that correct?

18 MR. PYLE: That's correct.

19 MR. MALONEY: Is that normally a boundary you rely on
20 in water planning?

21 MR. O'BRIEN: Objection, vague and ambiguous as to
22 relied upon in water planning. What type of water planning
23 are we talking about?

24 H.O. BROWN: Mr. Maloney.

25 MR. MALONEY: I think the question is perfectly clear.

1 H.O. BROWN: I understand the question.

2 MR. O'BRIEN: I would like to add this is beyond the
3 scope of his written testimony.

4 MR. MALONEY: Your Honor, can I respond to that?

5 I don't believe it is beyond the scope of the written
6 testimony because we asked how he made the maps and what he
7 relied on to make the maps. What we have here is the first
8 really objective boundary that's been discussed, since we
9 are talking about where the boundaries for this water usage
10 should be. We have this coming from USGS, and it is
11 basically the current boundary on which everybody relies on
12 in connection with water project land.

13 H.O. BROWN: I understand the question. Answer it if
14 you can.

15 MR. PYLE: Yeah. Well, the watershed boundary is
16 critical as far as determining all types of hydrologic
17 parameters with respect to any basin.

18 MR. MALONEY: Could you tell me what this brown area
19 is?

20 MR. PYLE: That is the federal land.

21 MR. MALONEY: Can you tell me what --

22 H.O. BROWN: Mr. Bezerra, you rise.

23 MR. BEZERRA: Yes, Mr. Brown. I -- once again I have a
24 black and white copy. I cannot tell what the beige area is,
25 what the purple area is, what the green area is. I just

1 don't know what they are talking about when they go into
2 this.

3 MR. MALONEY: May I respond to that?

4 We received black and white copies that are almost
5 impossible to read from everybody except Mr. Bezerra's
6 clients. We appreciate that. We sort of responded in
7 kind.

8 MR. O'BRIEN: I would like to point out all Agency
9 color exhibits were provided to Mr. Maloney and Mr. Virsik.
10 That is a misrepresentation.

11 H.O. BROWN: Stand to be recognized. I will give you
12 ample opportunity to speak.

13 You object.

14 MR. O'BRIEN: I don't want to make a big deal of this,
15 Mr. Brown. We went to great length and expense to provide
16 color copies of all our color exhibits to every party in
17 this room, and I simply resent Mr. Maloney's representation
18 of the facts in that regard.

19 H.O. BROWN: Thank you.

20 Mr. Maloney.

21 MR. MALONEY: Can I respond and apologize to Mr.
22 O'Brien.

23 H.O. BROWN. Just a minute.

24 MR. DONLAN: I would like to echo that on behalf of
25 Tanimura & Antle. They did color photocopies to every

1 interested party.

2 MS. KATZ: Thank you, Mr. Donlan.

3 MR. MALONEY: May I respond and apologize?

4 H.O. BROWN: Yes.

5 MR. MALONEY: We sent all our color copies to the
6 engineers so the stuff I was looking at was the black and
7 white. And I apologize to everybody. I thought we
8 indicated in our submittal that the maps were available if
9 they needed the full size maps. The reason we did not put
10 them in small sizes, they become unreadable.

11 H.O. BROWN: We are on the record in several places
12 that the maps submitted in this exhibit, we can't read them
13 either. That is why I gave everyone five minutes at least
14 to try to help you understand what is coming here.

15 This information I suspect is readily available in
16 USGS. This is not new information, by any means. We are
17 where we are on this, with the maps. If you need more time
18 to review any of these maps that are being presented, we
19 will give you more time. Otherwise let's proceed.

20 MR. MALONEY: Could you describe to a T what this brown
21 area is on this map, Mr. Pyle?

22 MR. PYLE: It is labeled as federal land, but I believe
23 it includes other government land as well.

24 MR. MALONEY: The lines in red are the clients'
25 ownership, and we hatch marked out the Rosenberg interests;

1 is that correct?

2 MR. PYLE: That is correct.

3 MR. MALONEY: I am going to quickly ask you about this
4 vested rights boundary. And in connection with -- this is
5 the same boundary that the court objected to on the previous
6 map. I would like the record to show that we supplied that
7 information to Mr. Pyle based on a careful analysis of the
8 land titles and the assessor maps at the Monterey County
9 Board of Supervisors. And the parcels that we believe are
10 covered in that vested rights boundary can be found in
11 Exhibit 33 and the amount of water that we think these
12 vested rights can use can be found in proposed Exhibit 34.
13 And the addresses of all these people were shown in the
14 submittal to the State Board in connection with our protest,
15 and we requested that the State Board advise all of these
16 people of that particular boundary that we had established.

17 Now, the reason the vested rights boundary is so
18 important is we have certain assumptions about the level of
19 development and Mr. Pyle will have further discussions about
20 that as we go forward.

21 H.O. BROWN: Ms. Lennihan.

22 MS. LENNIHAN: I would like to object, Mr. Brown, this
23 is outside the scope of the proceeding. It is irrelevant
24 and the claim of vested rights should not be admitted.

25 H.O. BROWN: Mr. O'Brien.

1 MR. O'BRIEN: Join in that objection.

2 H.O. BROWN: Mr. Maloney.

3 MR. MALONEY: Well, there is a certain principle here
4 that is very important. We had to show in our protest
5 information concerning the Protestants' historical, current
6 or proposed future diversion, and use of water that is
7 reasonably necessary to determine if the proposed
8 appropriation will result in injury to the Protestants'
9 exercise of its water rights.

10 This particular boundary is our best estimate of the
11 potentially developed land in the Upper Valley. There will
12 be further testimony to the extent of that potentially
13 developed boundary. It becomes very important for this
14 Board to determine if there is any potential future
15 diversion which will result in injury in connection with
16 this hearing. That is the reason we have artificially
17 created a boundary that we think can stand up under close
18 scrutiny on which the engineers can rely.

19 This boundary is essentially absolutely no different
20 than the boundary that was accepted without objection by the
21 Agency when it was described. And I believe it was Exhibit
22 No. 5-5 of the Agency. There was no legal basis on that
23 boundary. It wasn't the area used in the application. It
24 was just an accepted boundary out of the blue that they
25 accepted for the purpose of this analysis.

1 This boundary is important for us for establishing our
2 analysis. We did not look at the slope development
3 potential outside of that boundary. That is all the
4 testimony is going to be. We are just going to talk about
5 the development potential within that boundary.

6 H.O. BROWN: Mr. O'Brien.

7 MR. O'BRIEN: If Mr. Maloney is trying to establish
8 where water may be used, then I think he can do that, but he
9 doesn't have to get into water rights to do that. He can
10 take the landownerships of his current clients. He can have
11 the witnesses testify as to where future water use may occur
12 within those lands. We simply don't have to get into the
13 issue of where these vested right lands are located, and it
14 reopens the issue that we have now addressed several times
15 this afternoon, as to whether he is going to be allowed to
16 present water rights testimony in this proceeding. We don't
17 need to go there. We can get into the issue of injury
18 without getting into that type of water rights testimony.

19 H.O. BROWN: Ms. Lennihan.

20 MS. LENNIHAN: I think Mr. O'Brien well articulated it
21 is important for Mr. Maloney and his clients to have full
22 opportunity to show injury. They can do so without getting
23 into water rights, and we hope that will proceed to do so
24 now rather than having a title such as vested rights
25 boundaries and so forth.

1 H.O. BROWN: Thank you.

2 MS. LENNIHAN: Thank you.

3 H.O. BROWN: Mr. Maloney.

4 MR. MALONEY: What we are talking about -- this is all
5 we are talking about. We do not make any representations to
6 anybody about water rights in connection with this boundary.

7 H.O. BROWN: Can you change your question from water
8 rights to ask what Mr. O'Brien suggested?

9 MR. MALONEY: This boundary, and I am more than willing
10 to change the exhibit, is the area where water can
11 potentially be used.

12 H.O. BROWN: I think that will work.

13 MR. MALONEY: I got it, and I will change it.

14 The vested rights boundary, we'll call this "The
15 Potential Water Use Boundary."

16 H.O. BROWN: Any objections to that?

17 MR. O'BRIEN: No objections.

18 MR. MALONEY: In all future exhibits where we have
19 vested water rights boundary, we will call potential water
20 use boundary.

21 Thank you, your Honor.

22 H.O. BROWN: All right. That was easy.

23 MR. MALONEY: Thank you. First thing easy today,
24 wasn't it?

25 Now, in connection with the slope that you have set

1 forth in that particular map, did you do -- excuse me, let's
2 go back to the map that shows the land use of the protestant
3 clients. This is essentially land that is outside of Zone
4 2A; is that correct, Mr. Pyle?

5 MR. PYLE: Which map are we talking about?

6 MR. MALONEY: I am looking at Exhibit 3, and I am
7 looking at Exhibit 4 -- Exhibit 2 and Exhibit 4, going to
8 bounce back and forth between the two of them. Then I would
9 like you to look at Exhibit 5, your table that you
10 prepared.

11 MR. PYLE: Okay.

12 MR. MALONEY: You prepared certain slope calculations;
13 is that correct?

14 MR. PYLE: Correct.

15 MR. MALONEY: In connection with this potential water
16 use boundary, shown in Exhibit 4, did you make any
17 calculations as to the slope?

18 MR. PYLE: Yes, we did.

19 MR. MALONEY: Can you tell me what the calculation
20 showed?

21 MR. PYLE: The calculation showed above Salinas Valley
22 floor all land, except government lands, the acreage of
23 lands within slopes 0 to 15 percent is 323,000 some-odd.
24 Between 15 and 30 it was 361,000; and greater than 30
25 percent was 356,000 acres.

1 MR. MALONEY: Did you review this potential water use
2 boundary to determine how much water was available above the
3 Salinas Valley floor?

4 MR. PYLE: How much water was available?

5 MR. MALONEY: Yes. What was the slope, not water? Did
6 you review the slope of the potential water use boundary
7 above Salinas Valley floor?

8 MR. PYLE: Within that boundary the average with slope
9 0 to 15 percent was about 110,000. Fifteen to 30 percent
10 was 125,000, and greater than 30 percent was about 124,000
11 acres.

12 MR. MALONEY: In connection with Exhibit 2, I believe,
13 did you review the soil types of certain of the Protestants'
14 land?

15 MR. PYLE: Right. We determined the area within each
16 soil class and the total for all E classes was about 71,000
17 acres.

18 MR. MALONEY: Did you determine the soil types of the
19 Protestants' lands? This is 71,000 acres in the area that
20 you studied in the Upper Valley; is that correct?

21 MR. PYLE: Yeah. That was all of the areas that we
22 digitized the soil for, yeah. Within the Protestants' lands
23 the acreage was about 29,000.

24 MR. MALONEY: Do you know how much of that land could
25 be used for agriculture if it has water?

1 MR. PYLE: That would be within Class 1 through 4, and
2 that would be -- we didn't actually get a subtotal for
3 that. It looks like around 9- to 10,000 acres.

4 MR. MALONEY: You also -- did you combine the soil and
5 soil classifications for the Protestants' land?

6 MR. PYLE: Correct.

7 MR. MALONEY: Do you have an estimate as to how much
8 land is developable on Protestants' lands?

9 MR. PYLE: Between 0 and 15 percent slope, there was
10 6,000 acres of land, soils within the Class 1 through 4.

11 MR. MALONEY: This is all reflected in Exhibit 5; is
12 that correct?

13 MR. PYLE: Correct.

14 MR. MALONEY: I would like to go to Exhibit 7 next in
15 order. Could you show me what Exhibit 7 -- could you tell
16 me what Exhibit 7 shows?

17 MR. PYLE: Exhibit 7 is a table that shows the results
18 of model simulations that we did where we reduced or
19 eliminated pumping in certain areas of the Salinas
20 Valley. And it primarily shows the extent of seawater
21 intrusion for each of those runs, both with or without the
22 reservoirs.

23 MR. MALONEY: Without the reservoirs --

24 H.O. BROWN: Ms. Lennihan.

25 MS. LENNIHAN: Mr. Brown, I would like to object.

1 Perhaps there can be explanation of the relevancy of this
2 particular exhibit. It appears to me the exhibit goes to
3 the broader water issues in the Salinas Valley, the seawater
4 intrusion and not to the increment of storage at issue in
5 the application or to potential injury to Protestants.

6 H.O. BROWN: Thank you, Ms. Lennihan.
7 Mr. Maloney.

8 MR. MALONEY: We went through extensive discussion
9 about the history of the Salinas Valley as set forth in the
10 stipulation with Mr. Antle's engineer, and that history only
11 relies on record that goes back to 1945. What we plan to
12 demonstrate here with this exhibit and the next two
13 exhibits, that if the development had not occurred as it did
14 historically in the Pressure area, there would be no need
15 for an application to appropriate water. And that is the
16 purposes for which these exhibits are being offered and for
17 that purpose alone.

18 As long as the history issue has been raised by Mr.
19 Scalmanini, it is our opinion that we should be able to look
20 at all the history, not just the history of the last 50 to
21 60 years. These people caused their own problem, and now
22 they are trying to take water away from our area that we
23 need for our development purposes.

24 We've had a history of development much longer than
25 their area for the purposes of stopping -- for one of the

1 purposes for which the application is made is to help stop
2 saltwater intrusion, even though it is a small amount.

3 H.O. BROWN: Mr. Donlan.

4 MR. DONLAN: Protestants ask us to strike that
5 testimony, and we agreed to do that, the testimony that
6 dealt with seawater intrusion in the Salinas Valley
7 Project. He's reopening that question.

8 Second of all, Mr. Scalmanini's testimony dealt with
9 the operation of the reservoirs and the harm question that
10 Mr. Maloney has not addressed. It didn't deal with
11 historical overview of the entire history of Salinas
12 Valley. It was put on for the purpose of addressing the
13 question of harm.

14 H.O. BROWN: Mr. O'Brien.

15 MR. O'BRIEN: I would just join in the relevance
16 objection.

17 H.O. BROWN: Ms. Lennihan.

18 MS. LENNIHAN: I would just like to be very clear that
19 when Mr. Maloney tries to attack water use in other areas of
20 the Salinas Valley, that attempt should be overruled. That
21 is not an issue in this proceeding.

22 H.O. BROWN: Mr. Maloney.

23 MR. MALONEY: We are -- we are having a partial history
24 course. We've only talked about the history for the last
25 45, 50 years. The real history goes back to the turn of the

1 century when development in the county did development in a
2 given area. This is causing the need for water to be
3 transported allegedly out of our area and put into a
4 reservoir. That is the reason the history has to be put in
5 in terms of what occurred in the mouth of the Salinas River
6 by the County of Monterey through 1900 and 1915, and this
7 will directly show that it would not -- when this history is
8 understood, it will directly show there would have been no
9 saltwater intrusion or any need for this project if that
10 development hadn't occurred.

11 We will also put on history which will demonstrate that
12 we had pre-existing entitlements to use water in the
13 southern end of the county and had a major economic
14 operation going on in the southern end of the County as long
15 as 250 years ago, and the areas of the northern end of the
16 county around Salinas were nothing more than swampland. I
17 think that will be the history that is put on in rebuttal,
18 to rebut the history that has already been put on.

19 H.O. BROWN: Mr. Donlan.

20 MR. DONLAN: Again, I would just like to reiterate that
21 the relevant inquiry here is whether storage of this amount
22 of water will cause harm. None of this testimony is going
23 in that direction.

24 H.O. BROWN: Mr. Maloney.

25 MR. MALONEY: As far as harm is concerned, we have

1 evidence that we have offered there is over a hundred
2 thousand acres to be developed in the Upper Valley in what
3 we call the potential water use area.

4 Secondly, we do not have a stipulation from the County,
5 but the public records do show that there is approximately
6 another 30,000 south of Greenfield that the County
7 classifies as dry farm agriculture. We submit that you have
8 in excess of 100,000 acres between all of that that can be
9 developed, and that storage of water may interfere with the
10 development. That is the harm. That is definite harm.

11 We show with the existing development we already have
12 had a situation where we have harm, where water was used
13 during the frost protection system and kept in the storage
14 and not made available during the time that it was needed.
15 And they --

16 H.O. BROWN: That was the last word, Mr. Donlan.

17 Ms. Katz, do you have a suggestion here?

18 MS. KATZ: Maybe I am confused. My Exhibit 7 is called
19 Comparisons of Simulated Historical Seawater Intrusion with
20 that of various scenarios, and it begins with water year
21 1949.

22 Do I have the right exhibit, first of all? That is
23 what I have in here as Exhibit 7.

24 MR. MALONEY: I thought we went over this during the
25 break. I thought we were matching up exhibits with you.

1 MS. KATZ: Is that the exhibit you are talking about?

2 MR. MALONEY: Well, it does begin with water year 1949.
3 That is a simulation on which the model is based, and you
4 have to use that as the base. And what we have done is we
5 modified the model so you can find out what would have
6 happened if you had no development in 1904. That is what
7 Mr. Pyle's about to testify to.

8 MS. KATZ: This sheet of paper, Exhibit 7, is dealing
9 with seawater intrusion?

10 MR. MALONEY: The history of seawater intrusion,
11 history of water usage in that particular area of the
12 Salinas Valley of water area as defined by the USGS. We are
13 relying on the Agency's own model to prepare this exhibit.

14 MS. KATZ: Mr. Brown already ruled earlier that
15 seawater intrusion wasn't relevant here. We weren't going
16 to get into seawater intrusion. So I am struggling to find
17 out what the relevance of this exhibit is.

18 MR. MALONEY: We are using this exhibit to demonstrate
19 that if there had not been the historical development there
20 that occurred in the ESU 1 and 3, which is essentially the
21 northern end of the Pressure area, there would not have been
22 any need for an appropriation in this hearing. That is why
23 it is here.

24 We are talking about history of how the development
25 that occurred between 1904 and 19-- and the current

1 development actually caused the problem. Now they are
2 trying to use the water that is needed in the south for its
3 development for the purposes of solving the seawater
4 intrusion problem. If the history had gone back far enough,
5 we could have shown it would not have existed but for that
6 development.

7 MS. KATZ: Mr. Brown, that is not what the stated
8 purpose of use on the application is, if I am correct.
9 Frankly, I don't see the relevance here, either.

10 H.O. BROWN: I don't either. I will sustain the
11 objection.

12 We are going to take a 12-minute break here, our
13 afternoon break. We will come back after that.

14 MR. MALONEY: So the record is clear, do I understand
15 the objection is to 7, 8 and 9?

16 MS. KATZ: We haven't gotten there.

17 MR. MALONEY: I tried to cover everything at once so we
18 wouldn't have to go over it again.

19 H.O. BROWN: Raise the question after the break.

20 (Break taken.)

21 H.O. BROWN: Okay, Mr. Maloney, proceed.

22 MR. MALONEY: Seven, 8 and 9 are essentially different
23 variations on the same exhibit. I am assuming, based on
24 your rulings in connection with 7, that you are taking the
25 position that those exhibits cannot be put into evidence nor

1 cross-examination be made against them. And I'm further
2 stating for the record that I believe the various offers of
3 proof were sufficient so the record is covered on that issue
4 from my perspective. So I would have no objection to having
5 the same continuing overrule of 8 and 9 that you did with
6 7.

7 H.O. BROWN: Any objections to the objections?

8 So ruled.

9 MR. MALONEY: We have some practical problems. We
10 moved a bunch of clients to be here and, at request of the
11 Agency today, and would like to finish up rebuttal -- the
12 case in chief right now with some consideration made, and
13 hopefully bring up the rebuttal case afterwards.

14 H.O. BROWN: Are you ready for cross-examination right
15 now?

16 MR. MALONEY: But I want to say one thing before we do
17 that.

18 Can Mr. Pyle's statement -- he made the following
19 statement on Page 2:

20 After I have had the opportunity to review
21 the Agency's water availability analysis as
22 required by the State Water Resources Control
23 Board in a letter dated March 26, 1999,
24 Stetson Engineers may prepare surplus flow
25 calculation as rebuttal. (Reading.)

1 in the area of San Ardo; is that correct?

2 MR. MERRILL: Yes.

3 MR. O'BRIEN: I may have misheard you in your direct
4 testimony. I thought you used the number 22,000.

5 Am I wrong with that?

6 MR. MERRILL: No, it is not 22,000.

7 MR. O'BRIEN: 2,000.

8 Who owns that additional 2,000 acres of land that is
9 being developed?

10 MR. MALONEY: Just answer the question.

11 MR. MERRILL: It's a -- we are actually employed by --
12 you know, as common is the case in that, well, in several
13 areas, especially in southern Monterey County we were for a
14 long-term lessee who in turn leases the land. So we are
15 working for the developing lessee. Lessee being branch of
16 Robert Mondavi Winery. It's the Rancho San Bernabe, which
17 is the Duflock family. There is a specific ownership, I
18 believe that is the term as far as I know about it.

19 We also have, to finish up, I also have a ownership
20 interest in some land in a leasehold across the street that
21 has been developed since '95. But in terms of development
22 right now, the 2,000 acres. The principal part is located
23 on Duflocks'.

24 MR. O'BRIEN: Turning your attention to your written
25 testimony, Page 4, you have that in front of you?

1 MR. MERRILL: Okay.

2 MR. O'BRIEN: There is a reference on that page to a
3 decision called People versus Forni. Can you tell me what
4 the Court ruling was in that case?

5 MR. MERRILL: I can't specifically tell you what the
6 Court ruling was in that case.

7 MR. O'BRIEN: Well, your testimony references that
8 case, correct?

9 MR. MALONEY: I believe he mentions the regulation in
10 People -- that was confirmed in People versus Forni that
11 resulted in the water master.

12 MR. O'BRIEN: Excuse me, Mr. Maloney.

13 What generally was People versus Forni about?

14 MR. MERRILL: I couldn't tell you what it was about.
15 It had to do with water use. As to the specifics, I can't
16 tell you more about it than that.

17 MR. O'BRIEN: Are you aware that in the Napa Valley
18 there is an issue by this Board, the State Water Resources
19 Control Board, to require vineyards involved in frost
20 protection to obtain storage permits for frost protection
21 purposes?

22 MR. MERRILL: I don't know specifically about that.

23 MR. O'BRIEN: In the lands that are owned by San
24 Bernabe Vineyards which you help manage, do those lands
25 include storage reservoirs?

1 MR. MALONEY: Objection. What does the term "storage
2 reservoir" mean? In a legal sense or what does it mean?

3 H.O. BROWN: I understand the question. If you do, go
4 ahead and answer.

5 MR. MERRILL: There is reservoirs as typically used in
6 agriculture throughout the state and is quite common in
7 Monterey County, we have the same reservoirs as everyone
8 else has.

9 MR. O'BRIEN: You have the same reservoirs that
10 everyone else does. You have 22 reservoirs?

11 MR. MERRILL: Somewhere in that number.

12 MR. O'BRIEN: Each reservoir holds what, between 40 and
13 50 acre-feet?

14 MR. MERRILL: Averages about that.

15 MR. O'BRIEN: The water that goes into storage in these
16 reservoirs is produced from a well field that goes along the
17 Salinas River; is that correct?

18 MR. MERRILL: Correct.

19 MR. O'BRIEN: Those are fairly shallow wells?

20 MR. MERRILL: Meaning less than 150 feet?

21 MR. O'BRIEN: Correct.

22 MR. MERRILL: Yes.

23 MR. O'BRIEN: Water is pumped from this well field
24 along the Salinas river through a series of canals and
25 pipelines up to the reservoirs?

1 MR. MERRILL: Yes, technically, yeah. For the purpose
2 of this discussion that is basically correct.

3 MR. O'BRIEN: You fill these reservoirs in the early
4 part of the frost protection season?

5 MR. MERRILL: They are filled at the beginning of the
6 frost protection season, but they are -- they are for
7 short-term storage. You don't fill it up and then draw off
8 it during the season. You could use a reservoir in a night.
9 The reservoir augments what the well field lets out because
10 the sprinkler system exceeds what the wells could do by
11 themselves. So it is a very short-term storage.

12 MR. O'BRIEN: I am trying to understand in a typical
13 year when do you start filling the reservoirs.

14 MR. MERRILL: Generally speaking, we would start
15 filling them, let's say, nominally February 1st.

16 MR. O'BRIEN: Do you typically fill out 22 reservoirs?

17 MR. MERRILL: The frost protection system is activated
18 as the grape varieties leaf out. So the early varieties, we
19 begin to store water, have your sprinkler system ready to go
20 so you could frost protect. It is variable. You'll start
21 off with a few early varieties, and by the time one gets
22 later into the spring, say toward the end of February, you
23 would have, say, all of the reservoirs full, whatever the
24 plan is you are using, it would substantially be full.

25 MR. O'BRIEN: Once all the reservoirs are full, the

1 water is essentially held in storage during the frost season
2 depending on the need for frost protection purposes.

3 MR. MERRILL: They would be topped off. If there is
4 irrigation that we needed, we would draw the water down and
5 fill it back up again. There is a combination of irrigation
6 and frost that is done. The volume is principally reserved
7 for the sprinkler system for frost.

8 MR. O'BRIEN: You don't start irrigating before around
9 June 1st, do you?

10 MR. MERRILL: We only get ten inches of rainfall in
11 south county. We have sandy soils, light soils. It's quite
12 possible that you'd have to irrigate during the winter,
13 depends on the rain cycle. If it is a wet winter, if it is
14 not. As necessary if it is a dry cycle.

15 MR. O'BRIEN: I assume if there is temperaturewise not
16 a need for frost protection, then the water stays in the
17 reservoirs until you need it for irrigation?

18 MR. MERRILL: Correct.

19 MR. O'BRIEN: Does it sometimes occur that the water
20 would stay in storage in those reservoirs for, say, more
21 than 30 days?

22 MR. MERRILL: It is conceivable.

23 MR. O'BRIEN: It happens, doesn't it?

24 MR. MERRILL: More than 30 days, yeah, I would say so.

25 MR. O'BRIEN: Does San Bernabe Vineyards ever obtain a

1 permit from the State Water Board for those reservoirs?

2 MR. MERRILL: I don't know if they did or not.

3 MR. O'BRIEN: You don't know?

4 MR. MERRILL: I did nothing, don't participate in
5 that. Nothing from any of my efforts. I don't know whether
6 they did or didn't.

7 MR. O'BRIEN: I understand from your testimony that you
8 generally support the sort of regulatory program embodied in
9 Section 659 of Title 23 of the California Administrative
10 Code and the People versus Forni case; is that right?

11 MR. MERRILL: I support a more orderly way that we have
12 water. Seems, based on what I know, that could be a useful
13 tool.

14 MR. O'BRIEN: That being, requiring --

15 MR. MERRILL: Whatever somebody did somewhere else,
16 such as the Napa where they have faced some of the same
17 issues.

18 MR. O'BRIEN: Do you think that the approach they took
19 in Napa would work well in the Salinas Valley?

20 MR. MERRILL: I don't know if it literally could be
21 used exactly as it is in Napa, but I think it could be the
22 basis for a long-term solution, realizing differences
23 between areas do exist.

24 MR. O'BRIEN: You gave some testimony during the case
25 in chief regarding some opinions you have about interference

1 that has been caused by the diversions to storage at
2 Nacimientto Reservoir.

3 Do you recall that testimony?

4 MR. MERRILL: I believe I do, yes.

5 MR. O'BRIEN: I believe your testimony focused on a
6 drought situation. Am I recalling that correctly?

7 MR. MERRILL: Right.

8 MR. O'BRIEN: Do you recall when that drought was?

9 MR. MERRILL: My recollection was that it was from '92,
10 spring of '92. I believe that is when it was. I have to
11 check. Time goes by.

12 MR. O'BRIEN: Other than this drought scenario that
13 occurred from approximately -- did you say, '90 to '92?

14 MR. MERRILL: Right.

15 MR. O'BRIEN: Other than this drought scenario that
16 occurred between 1990 and 1992, are there any other
17 instances that you are aware of in which you believe that
18 diversions by the Agency to storage have resulted in
19 interference to San Bernabe Vineyards?

20 MR. MERRILL: Not to the dramatic extent it did that
21 time. And the reason I mention that time was we got into
22 specific repairs and costs and so on. So that is the most
23 noteworthy one that I can recall.

24 MR. O'BRIEN: I want to focus this very specifically so
25 if there are other situations that you are aware of where

1 you have evidence that there was interference caused by
2 Monterey County Water Resources Agency to the use of water
3 by San Bernabe Vineyards, I would like to know specifically
4 when that occurred.

5 MR. MERRILL: The most notable other one might have to
6 deal with when too much water is released and land gets
7 flooded, and we are not here to talk about flood control.
8 At this point, I have to check my records to see. My
9 recollection is that that is the most noteworthy time that
10 comes to mind.

11 MR. O'BRIEN: You keep using the term "most
12 noteworthy." I want to know whether as you sit here today
13 whether you are aware of any other instance of interference
14 resulting from diversion of water by the Agency.

15 MR. MERRILL: During my tenure, that is the only one I
16 know. If I had the opportunity to check with those who run
17 the ranch earlier, I know there were other drought periods
18 where the vineyard existed. I believe '77 was a drought. I
19 would personally be suspicious if some of the things that
20 happened to our wells and pumps in the river probably
21 happened during that time, but it would be speculation on my
22 part at this time to tell you that.

23 MR. O'BRIEN: Thank you.

24 If you were to go investigate this further, would one
25 of the people you would want to talk to be Mr. Petrovic?

1 MR. MERRILL: Yes.

2 MR. O'BRIEN: Mr. Petrovic is the vineyard manager?

3 MR. MERRILL: Yes.

4 MR. O'BRIEN: He is more familiar with some of the
5 history and day-to-day operations at the vineyard?

6 MR. MERRILL: Mr. Petrovic has been there a few more
7 years than I have and may -- could shed some light on that
8 standpoint.

9 MR. O'BRIEN: What you are saying, as I understand it,
10 is that if the Agency hadn't been storing water during this
11 1990-1992 time period, San Bernabe Vineyard would not have
12 suffered interference with its water use. Is that a fair
13 summary?

14 MR. MERRILL: Not so much the storage issue, but the
15 lack of releases. There was no water released, none that I
16 can -- minimal water released for an extended period of
17 time.

18 I think in all fairness they were caught between a rock
19 and a hard place. They felt they couldn't release the water
20 because it hadn't been raining. They chose to keep it
21 behind the dam. Whether use for recreation or whether they
22 thought they might have a bigger need later, it is a lack of
23 releases more than it is actual storage.

24 MR. O'BRIEN: To your understanding, it is not a
25 situation where the Agency had water flowing into the

1 reservoir and was not passing that water through; it is more
2 a situation where they had some water in the reservoir which
3 they were not releasing?

4 MR. MERRILL: There was water that flowed into the
5 reservoir. But how much, I don't know. There was
6 absolutely no water that came out that I recall. Whatever
7 limited -- albeit, maybe there was clearly less than there
8 would be on a more rainy period.

9 I think my contention that had the dam not been there
10 at all, we would have been better off than having what flow
11 there was stopped behind the dam and not released for an
12 extended period of time. We were in worse shape during that
13 period because the dam was there and operated in that
14 fashion than if we had not had a dam at all, is my position.

15 MR. O'BRIEN: That is your opinion?

16 MR. MERRILL: Yes.

17 MR. O'BRIEN: Have you done any kind of a hydrologic
18 analysis to support that opinion?

19 MR. MERRILL: We have pump and well records that show
20 what was going on in our well field. And we did fund some
21 hydrological work ourselves in an effort to find some
22 solution to the problem, which basically we weren't getting
23 water out of our wells. And that entailed analyzing where
24 the wells were pumping, from what depth, and basically they
25 were pumping much, much deeper instead of pumping from 40

1 to, say, 30 to 40 feet. They were drawing from down near
2 the bottom on the wells. And so the pumping cost was much
3 higher.

4 It doesn't look like much, but if you are acquainted
5 with hydrology and pump curves, if you have a 75-horsepower
6 motor which is a relatively small well motor, you have a set
7 of pump holes pumping, if that water level drops 40 feet --

8 MR. O'BRIEN: Excuse me --

9 MR. MERRILL: Let me just finish this. It will only
10 take a second.

11 H.O. BROWN: Wait a minute. This is Mr. O'Brien's
12 turn.

13 MR. MERRILL: Okay. He asked a question and I don't
14 get the chance to answer?

15 MR. O'BRIEN: My question --

16 H.O. BROWN: Wait, please.

17 This is Mr. O'Brien's turn. He gets to ask the
18 question and you get to answer it. If you can't answer a
19 question with a short answer or a yes or no, then qualify it
20 up front. That gives him the opportunity to invest his time
21 with your answer or not.

22 MR. MERRILL: Okay.

23 H.O. BROWN: Mr. O'Brien.

24 MR. O'BRIEN: Thank you, Mr. Brown.

25 Mr. Merrill, have you personally done any hydrologic

1 analysis to determine whether diversions of water by
2 Monterey County Water Resources Agency resulted in any
3 interference with water use by San Bernabe Vineyards?

4 MR. MERRILL: I have not personally done a hydrologic
5 study.

6 MR. O'BRIEN: Thank you.

7 Do you understand what this proceeding is about?

8 MR. MERRILL: I think I do. I have not sat through too
9 many of these. I haven't sat through any of them.

10 MR. O'BRIEN: Tell me what your understanding of what
11 this proceeding is about.

12 MR. MERRILL: I don't -- do I need to do that? I am
13 simply here to answer questions, to be honest.

14 MR. O'BRIEN: I think I am entitled to ask that
15 question, sir.

16 MR. MERRILL: As I understand it is basically to
17 ascertain whether the County of Monterey through the water
18 agency has a right to store more water behind Nacimiento
19 Lake, and if they do, and part of the decision whether they
20 do or they don't, is the fact that our group or the
21 Protestants as they are called, basically, I guess they've
22 argued that -- the Protestants have argued that storing more
23 water behind the lake has a potential to injure their
24 interests or that consideration of the fact that it could
25 injure their interests should be taken in account before the

1 permit is granted.

2 MR. O'BRIEN: Are you aware of the proximate increment
3 of storage that the Agency is seeking in this proceeding?

4 MR. MERRILL: I did know.

5 MR. O'BRIEN: If I told you 27,900 --

6 MR. MERRILL: I was going to say 30,000 acre-feet.

7 MR. O'BRIEN: I don't want to play games here. I just
8 want to understand what you understand about the proceeding.

9 MR. MERRILL: I believe a 350,000-acre lake.

10 MR. O'BRIEN: The actual current measured capacity of
11 the reservoir is 377,900 acre-feet.

12 My question is this: You have asserted that there has
13 been interference with San Bernabe Vineyard's water use
14 during this 1992 period, correct?

15 MR. MERRILL: Correct.

16 MR. O'BRIEN: Have you examined the evidence that was
17 submitted by the Agency in this proceeding and I am
18 specifically referring to MCWRA Exhibit No. 3-8?

19 MR. MALONEY: Why don't you show him the exhibit.

20 MR. O'BRIEN: I would be happy to do that. I was first
21 asking if you had a chance to review any of the Agency
22 exhibits.

23 MR. MERRILL: I have not.

24 MR. O'BRIEN: I will show you Exhibit 3-8.

25 MR. MALONEY: Could I see it?

1 MR. MERRILL: Okay.

2 MR. O'BRIEN: Based on your review of Exhibit 3-8, is
3 it your understanding that the Agency did not store any
4 water over the 350,000 acre-foot level during 1990 and 1991
5 and 1992?

6 MR. MERRILL: That is correct.

7 MR. O'BRIEN: During this 1990 to '92 time period, was
8 there damage to any vineyard owned by San Bernabe Vineyard
9 as result of frost which resulted from an inadequate supply
10 of water?

11 MR. MERRILL: No.

12 MR. O'BRIEN: During this 1990 to '92 time period, was
13 there damage to any vineyard owned by San Bernabe Vineyard
14 as a result of inadequate supply of irrigation water?

15 MR. MERRILL: Did the vineyard itself? No. If you mean
16 San Bernabe Vineyard as an all-encompassing term, there was
17 row crop lands that basically the lease had to be canceled
18 to provide the water to the vineyards.

19 MR. O'BRIEN: Appreciate that clarification. I am
20 focussed on the vineyard issue right now. I want to make
21 sure that the record is clear on this. Your testimony was
22 that there was no damage to the vineyard crops in 1990 to
23 '92 as a result of an inadequate irrigation supply?

24 MR. MERRILL: That is true.

25 MR. O'BRIEN: Were you aware that in the testimony

1 provided by the Agency in this proceeding that it was stated
2 that the Agency stated it anticipates that it would divert
3 water to storage under this application, 30532, only in
4 above normal rainfall years?

5 MR. MERRILL: I am not aware of it, of the specifics.

6 MR. O'BRIEN: You in your direct testimony provided
7 some testimony relating to water use by vineyard land in the
8 Salinas Valley. I would like to ask you a few questions
9 about that.

10 I believe in your oral testimony you stated that San
11 Bernabe Vineyard uses, correct me if I am wrong about these
12 numbers, but I wrote down, about one-third to 40 percent of
13 the water diverts for frost protection purposes; is that
14 correct?

15 MR. MERRILL: Yeah. Again, it is variable based on
16 season. It could be anywhere from a third -- it could be a
17 third. It could exceed 50 percent on some years.

18 MR. O'BRIEN: Well, in your written testimony,
19 referring you to Page 2, you state that this -- it is the
20 second paragraph, first full paragraph on Page 2. You state
21 that San Bernabe Vineyard pumps approximately 15,000
22 acre-feet per year from the water-bearing formation.

23 MR. MERRILL: Uh-huh.

24 MR. O'BRIEN: Then you state in the next sentence
25 approximately 10,000 acre-feet of water are pumped and

1 distributed through a sophisticated canal and reservoir
2 system for frost protection.

3 Do you see that?

4 MR. MERRILL: Yes.

5 MR. O'BRIEN: I guess I am confused as to the
6 discrepancy in my mind between the answer you just gave me
7 up to 50 percent that would be used for frost protection,
8 whereas in this testimony it appears that you are saying
9 about two-thirds of diverted water would be used for frost
10 protection.

11 MR. MERRILL: During the period February through May,
12 the sprinkler system is activated, so frost protection and
13 irrigation are both handled through the sprinklers.
14 Additionally, a third of the ranch is on sprinklers and
15 doesn't have any drip. We keep our records at the ranch.
16 We keep records on how much moves through the drip system
17 and how much moves through the sprinkler system. We do that
18 by block and a variety and so on.

19 Again, I don't want to make a long answer because I
20 want things short. The fact is when water is moving through
21 the sprinkler during that time of year, it is not delineated
22 -- doesn't have frost stamped on each gallon that goes
23 through. That is part of the difference here, whether it is
24 exclusively frost protection. I know it says frost
25 protection. It is actually irrigating with those sprinklers

1 at the same time.

2 MR. O'BRIEN: As you sit here today, what is your best
3 estimate as to the long-term average number for water used
4 by San Bernabe Vineyard annually for frost protection
5 purposes?

6 MR. MERRILL: Basically, it takes between
7 three-quarters of a foot and an acre-foot of water to
8 irrigate the vines. If you didn't have any frost
9 protection, it still takes something in that range. You can
10 see that stated in the 5,000 acre-feet strictly through the
11 drip system from June to September.

12 During the other period, the early part of the year,
13 the spring, the irrigation, you are talking about -- I
14 believe the amount of water that moves through the
15 sprinklers, combination drip and -- combination of frost and
16 irrigation through a sprinkler system can reach 10,000
17 acre-feet.

18 But there is variation from year to year. The part for
19 the vines in the summer is pretty constant. The part that
20 can vary is the frost protection in the spring.

21 MR. O'BRIEN: Fair enough.

22 MR. MERRILL: I am not trying to be elusive.

23 MR. O'BRIEN: What you are saying is, as I understand
24 it, is as to the portion of the water supplies used after
25 June 1, it is a commingled supply, and whether you call it

1 frost protection or irrigation it is sometimes a difficult
2 distinction to make during that period?

3 MR. MERRILL: It is. But we know the principal reason
4 we turn on water through the sprinklers in the early part of
5 the season is for frost. And, additionally, if it is a cold
6 year and you put water on for frost, obviously, the vines
7 can use that water that was put on for frost and
8 consequently you would irrigate less.

9 We keep sprinklers and drip separately accounted for.
10 A drip system, by its very nature, drips water right at the
11 vine, puts out considerably less water than a sprinkler
12 system does. That is watering all of the surface area;
13 primarily that is where the difference comes from.

14 MR. O'BRIEN: Is it fair to say that at least some
15 increment of irrigation does occur through the sprinkler
16 system?

17 MR. MERRILL: Yes.

18 MR. O'BRIEN: Your testimony also contains some
19 projections about increases in vineyard acreage in Monterey
20 County. I guess the first question I would like to ask:
21 Would you agree, based on your years of experience in the
22 wine industry, that the decision on whether to plant new
23 vineyard acres depends on a lot of different variables?

24 MR. MERRILL: In terms of a business decision to do
25 so, yes.

1 MR. O'BRIEN: One variable I would assume would be
2 price of wine?

3 MR. MERRILL: Correct.

4 MR. O'BRIEN: Would one of the variables that a
5 landowner grower would look at also would be the reliability
6 of the water supply?

7 MR. MERRILL: I think it would be a good idea. I would
8 think most people would do that who are knowledgeable.

9 MR. O'BRIEN: In projecting this dramatic increase in
10 vineyard acreage in the Salinas Valley in the future, is one
11 of the factors that you took into account in making that
12 prediction the fact there is a reliable water supply in the
13 valley?

14 MR. MERRILL: It would be one of the factors.

15 MR. O'BRIEN: You state that there are currently 45- to
16 50,000 acres of vineyard planted in Monterey County. This
17 is on Page 3 of your testimony. My question is:

18 Is that 45,000 acres to 50,000 acres, is that all
19 Salinas Valley or is that the entire county?

20 MR. MERRILL: Would it be County; the vast majority of
21 those acres ends up being in the Salinas Valley.

22 MR. O'BRIEN: Do you happen to have an estimate of the
23 current vineyard acreage just within the Salinas Valley?

24 MR. MERRILL: Would only be an estimate on my part. I
25 haven't looked at it. If you took out what is known as

1 block one Aims Valley [phonetic], Carmel Valley, it's hard
2 to envision that exceeding maybe 7,000 acres at the most.

3 So again, you are back to the majority of it being the
4 Salinas Valley.

5 MR. O'BRIEN: Somewhere in the ballpark of 40,000 acres
6 would be the current vineyards in the Salinas Valley?

7 MR. MERRILL: Yes.

8 MR. O'BRIEN: You also state that the current wine
9 production for Monterey County is about 7,000,000 cases of
10 wine, correct?

11 MR. MERRILL: Yes, correct.

12 MR. O'BRIEN: Of that, how much would be attributable
13 to the Salinas Valley?

14 MR. MERRILL: It would be proportionate. So if we took
15 out -- we take out 13, 14 percent. It is proportionate.

16 MR. O'BRIEN: You predict or project that wine
17 production for Monterey County vineyards will climb to
18 15,000,000 cases per year when all acres are fully in
19 production.

20 Do you see that testimony?

21 MR. MERRILL: Uh-huh.

22 MR. O'BRIEN: What time frame are we talking about
23 here?

24 MR. MERRILL: That would be within probably the next
25 five years.

1 MR. O'BRIEN: You are saying there is roughly going to
2 be a doubling of the wine production in Monterey County in
3 the next five years due to new vineyards?

4 MR. MERRILL: Replanted vineyards. The original
5 planting being 25 years old, being replaced with a new
6 planting to produce roughly twice as many grapes per acre,
7 twice as many bottles of wine. The combination of new
8 plants and new acreage, I betcha' that is pretty darn
9 close.

10 MR. O'BRIEN: In making this projection, how much of it
11 is new vineyard acreage that was not previously in vineyard
12 production?

13 MR. MERRILL: Our -- I am doing this by recollection.
14 My recollection is that the number of acres in Monterey
15 County I believe peaked at about 35,000 probably in the
16 early '80s and fell off to probably 27-, 28,000 acres by the
17 mid '80s to early '90s.

18 So, now I guess you would say would be -- you are
19 heading back up again. If you said 35,000 to begin with,
20 then you are looking at 10- to 20,000 more acres that would
21 be new. It is important to note there are areas where
22 grapes come -- transition to traditional row crop land
23 depending on economics, basically moving back to row crops.
24 When the economics change, they can move back to grapes. It
25 doesn't happen every year because that influences these

1 numbers a little bit.

2 MR. O'BRIEN: I appreciate that clarification. I guess
3 what I am trying to get at is as good an estimate as you
4 have going forward from today, as to the new vineyard
5 acreage that you would expect to see in the Salinas Valley
6 during the next 20 years.

7 MR. MERRILL: What new acreage do I expect to see?

8 MR. O'BRIEN: How many new vineyard acreage on lands
9 not previously in vineyard production in the Salinas Valley
10 during the next 20 years?

11 MR. MERRILL: I would say between 50- and a hundred
12 thousand acres would not be unreasonable. Shortage of grape
13 lands in California and there is few places for premium
14 wines to go. And Monterey happens to be one of the better
15 places to expand planting for premium wineries.

16 MR. O'BRIEN: Of this 50- to a hundred thousand acres
17 that you just mentioned, do you have an estimate as to how
18 much of that new vineyard development would be on lands not
19 previously irrigated for row crops or other crops?

20 MR. MERRILL: A significant part of that. It is
21 somewhat speculative to say how much. A significant part of
22 that would be on land that had not been planted on row
23 crops. There would be some row crop conversion.

24 MR. O'BRIEN: You use the term "significant." Can you
25 give me a general idea what you mean?

1 MR. MERRILL: I think half of it could conceivably come
2 -- half or more could come from land traditionally that has
3 not been in row crop.

4 MR. O'BRIEN: Would you expect that this new vineyard
5 production on land not previously in row crop would occur on
6 the valley floor of Salinas Valley or on sloped lands?

7 MR. MERRILL: I would expect there may be a third
8 category. It wouldn't be on the valley floor; bench lands
9 or mesas. So some of it would be rolling and some would be
10 relatively flat. Maybe not in the strict furrow irrigating
11 sense, but relatively flat land but not on the valley
12 floor.

13 MR. O'BRIEN: Is it fair to say that the majority of
14 this new vineyard development, in your opinion, would not
15 occur on the valley floor?

16 MR. MERRILL: Depends what you define as the valley
17 floor. I guess the valley floor -- could you define the
18 valley floor? I am not exactly sure where the transition is
19 between the valley floor and the beginning of the rolling
20 hills.

21 I guess there could be a lot of land in that category.

22 MR. O'BRIEN: I will pursue that question with Mr.
23 Pyle. I think he's looked at that specifically.

24 Do you know as you sit here today whether these lands
25 that you are talking about, this 50- to a hundred thousand

1 acres of land that you think will be developed in new
2 vineyards, whether that land or a significant portion of
3 that land has a water supply underlying the land? In other
4 words, if you put a well in that land would be able to
5 effectively support vineyard operations?

6 MR. MERRILL: Some would be able to and some would have
7 -- some would basically need to be closer to the river in
8 layman's terms, closer to the center of the valley.

9 MR. O'BRIEN: If the land weren't closer to the river
10 and they didn't have a water supply, would there be any
11 other option if one wanted to develop new vineyard on it?

12 MR. MERRILL: I don't know. I think there would be
13 limited options, certainly. But I think most of the
14 property do extend -- do extend quite a ways toward the
15 valley floor.

16 MR. O'BRIEN: Are you aware of any plans of San Bernabe
17 Vineyards to plant new vineyard areas?

18 MR. MERRILL: There is some plans to develop vineyard
19 on portions of San Bernabe that have not historically had
20 vineyards on them, yes.

21 MR. O'BRIEN: How many acres are we talking about?

22 MR. MERRILL: I would think, again depending on slope,
23 probably a thousand to 1,500 acres on the high side.

24 MR. O'BRIEN: Can you describe for me the geographic
25 location of these San Bernabe lands on which new vineyard

1 acreage is being planned?

2 MR. MERRILL: Tends to be on the west, west and
3 southwest side of the property, if that helps you.

4 MR. O'BRIEN: Near the hills?

5 MR. MERRILL: Correct.

6 MR. O'BRIEN: Would this be sloped lands?

7 MR. MALONEY: Objection. What does sloped lands mean?

8 MR. O'BRIEN: Zero to 15 percent; that is the number
9 that Mr. Pyle used.

10 MR. MERRILL: Probably most would be 0 to 15.

11 MR. O'BRIEN: Do you know what the proposed water
12 supply for these lands would be?

13 MR. MERRILL: It would be extension of the systems
14 already used.

15 MR. O'BRIEN: This is pumping water up from the well
16 field near the river up to these lands?

17 MR. MERRILL: Correct.

18 MR. O'BRIEN: Are you aware of plans, current plans, by
19 any other member of Mr. Maloney's client group to plant new
20 vineyard acreage?

21 MR. MERRILL: Other than the project I am involved with
22 in San Ardo on the Duflock property, I don't know of any.
23 That is in process. I don't know whether that is considered
24 new or what.

25 MR. O'BRIEN: Other than that, that is the Mondavi

1 project you mentioned, other than the Mondavi project, are
2 you aware of any other plans by Mr. Maloney's client group
3 to plant new vineyards in the Salinas Valley?

4 MR. MERRILL: I am not aware, but it is not uncommon
5 for a number of negotiations or discussions to be going on.
6 I am not personally aware of any specific plans to have
7 development.

8 MR. O'BRIEN: Are you aware of any specific plans by
9 any landowner within the Salinas Valley to increase vineyard
10 cultivation other than the Mondavi project and the San
11 Bernabe Vineyard's project which you described?

12 MR. MERRILL: I am aware of what I believe are specific
13 plans, but it is not like everybody sits down and talks over
14 the specific plans with me, so it would be somewhat
15 speculative. I would say in a gossiping sense I suppose I
16 am aware. Whether that actually comes to pass and grapes
17 get planted, it would be speculative. I generally believe
18 there is other plans being discussed, whether it gets
19 completed or not I don't know.

20 MR. O'BRIEN: I would like to understand the basis for
21 that belief. I would like --

22 MR. MALONEY: Objection. I have no problem following
23 this line of questions. What I am concerned about is the
24 potential trade secrets, et cetera. And I am sure you do
25 not intend to get into the trade secrets.

1 If Mr. Merrill has any concern about trade secrets, I
2 will instruct him to tell me before he answers the
3 questions. I would like the question to be as general as
4 possible so we don't get into that issue.

5 H.O. BROWN: You have an objection?

6 MR. MALONEY: I am trying to give an objection and also
7 give Mr. O'Brien a way out of the objection. I don't think
8 Mr. O'Brien would have any objections to my way out.

9 MR. O'BRIEN: I don't necessarily agree that these are
10 trade secrets. I think Mr. Maloney has opened this issue
11 wide open in this proceeding. Let's see how the questions
12 go and we can --

13 MR. MALONEY: Okay.

14 MR. O'BRIEN: I would like to know whether you are
15 aware of any plans, current plans, and the nature of those
16 plans to develop new vineyard cultivation in the Salinas
17 Valley other than the San Bernabe and Mondavi projects
18 you've already described.

19 MR. MERRILL: I guess I have trouble with what does
20 aware mean. Do I hear things? Yeah.

21 MR. O'BRIEN: What do you hear?

22 MR. MERRILL: Hear people are going to plant grapes on
23 the Central Coast.

24 MR. O'BRIEN: Who is going to plant them?

25 MR. MERRILL: Anybody in the business of selling wine,

1 and they are all looking at the Central Coast because of the
2 shortage of land in Napa and the North Coast. And they need
3 to be raised where it is cool and that takes you down to
4 Monterey, San Luis Obispo and Santa Barbara Counties.

5 Santa Barbara County is limited. San Luis Obispo-Paso
6 Robles area has grown tremendously. You end up back at
7 Monterey County. So it's inescapable to draw that
8 conclusion.

9 MR. O'BRIEN: I understand that.

10 Are you aware of anything more specific than a general
11 notion that there is going to be more grape production on
12 the Central Coast?

13 MR. MALONEY: If you would like to ask me a question, I
14 am available.

15 MR. MERRILL: Okay.

16 MR. O'BRIEN: Wait a minute. Mr. Brown, this is not a
17 deposition. I think if Mr. Maloney wants --

18 MR. MALONEY: Your Honor, could we --

19 MR. O'BRIEN: Excuse me, I am not finished.

20 H.O. BROWN: Wait a minute.

21 Thank you.

22 MR. O'BRIEN: If Mr. Maloney wants to make an
23 objection, he is certainly entitled to do that and have you
24 rule on that. I don't think he is allowed to confer with
25 the witness while a question is pending.

1 H.O. BROWN: That is right, Mr. Maloney. If you have
2 objection, go ahead.

3 MR. MALONEY: Your Honor, I am trying to get as much
4 testimony on this issue as possible. What I am concerned
5 about is Mr. Merrill may have some trade secrets that he
6 does not want to disclose publicly. Maybe if I can have a
7 conference with him over the specific issue, I can get a
8 better answer for Mr. O'Brien.

9 We all know there is speculation going on. If he is
10 right in the middle of making an offer on a given piece of
11 property or vice versa, I don't think it is appropriate for
12 this hearing, particularly when we are talking about the
13 broad, general nature of the issues to force Mr. Merrill to
14 disclose this information.

15 All I would like to do is to make sure there is nothing
16 he is concerned about that would have impact on the trade
17 secret.

18 H.O. BROWN: Reask the question, please. Let's see
19 where we are going. Try it a little differently.

20 MR. O'BRIEN: Thank you.

21 Other than the proposed vineyard acreage expansion by
22 Mondavi and San Bernabe Vineyard which you already
23 described, are you aware of any plans to expand vineyard
24 cultivation in the Salinas Valley at the present time?

25 MR. MERRILL: I am still in the same boat. I don't

1 know how to answer that. If I could talk to Mr. Maloney --
2 I don't know how to answer that. I am aware generally. I
3 have answered as specific as I can. It is not news, I don't
4 think, to anyone in the proceedings or anyone in the farming
5 business that grapes are being planted in Monterey County
6 and are a crop that has been profitable the last few years
7 and, hence, people are planting grapes.

8 So beyond that, I told you my specific involvement and
9 I don't have any more comment on that who may be or who may
10 not be. It is just a speculative answer.

11 MR. O'BRIEN: Well, sir, you've come into this
12 proceeding providing an opinion that there is going to be
13 50- to a hundred thousand acres of grape production in the
14 Salinas Valley during the next few years. Am I right about
15 that?

16 MR. MERRILL: Correct.

17 MR. O'BRIEN: I think I am entitled to find the basis
18 for that opinion. And I think I am entitled to ask you the
19 question of whether you are aware of any specific plans in
20 that regard.

21 If the answer is no, you can give that answer.

22 MR. MALONEY: Objection. Badgering the witness.

23 I have no problems asking the generalized question. I
24 do not want Mr. -- I do not believe it is appropriate to ask
25 Mr. Merrill about specific business deals, because of the

1 fact that we are looking in this on a broad, general
2 basis. Questions have been asked already about water usage
3 and things like that. I think we are severely prejudiced
4 because we are not able to go into our water rights in
5 connection with San Bernabe.

6 Now he's trying to find out who is making a deal on
7 such and such so he can tell some of his clients so they can
8 go into competition with us.

9 H.O. BROWN: Wait.

10 MR. O'BRIEN: May I respond, please.

11 H.O. BROWN: No. You have indicated there is 110,000
12 acres potentially additional grapes to be grown. The
13 question has been asked, what is the basis of that. I have
14 heard a couple answers. Maybe that is all you have. If it
15 is, that is fine; you can say so. If you know where that
16 information comes from or can substantiate it or would like
17 to reinforce your previous answer of 110,000, go ahead and
18 say so. If not, you don't know; that is all right. That is
19 the answer.

20 MR. MERRILL: What I would answer is that based on what
21 I know about topography, the soils, the suitability of lands
22 that are available for development and based on what wine
23 grapes need and based on personal opinion people are going
24 to continue to drink wine, that the land I see in Monterey
25 County, those kind of averages can be planted.

1 H.O. BROWN: That is the basis for the 110,000
2 additional acreage?

3 MR. MERRILL: Yes. My general knowledge of which way
4 the industry is moving.

5 MR. O'BRIEN: You are not aware of any specific plans
6 by any specific landowner, other than the two you have
7 mentioned, to increase vineyard cultivation?

8 MR. MALONEY: I think there is an objection to specific
9 plans by specific landowners or specific vineyards other
10 than the ones involved in our group. You answered that.

11 I think it would be -- there is no need to get into
12 that. We can give you a general number or we can give it on
13 a confidential basis. We have to have a guarantee it will
14 not be out in the marketplace. There are negotiations going
15 on all the time for land for vineyards in Monterey County.

16 H.O. BROWN: Mr. Maloney, address the objection to me,
17 please.

18 MR. MALONEY: Excuse me, your Honor.

19 H.O. BROWN: And then I will handle it with Mr. O'Brien.

20 MR. MALONEY: I object on the theory this is getting
21 into trade secrets of Mr. Merrill. There is no problems
22 with the answer as long as -- with the question as long as
23 it is general. We don't want to get into specific names
24 except in connection with the specific client group that we
25 represent in this particular proceeding.

1 H.O. BROWN: Mr. Maloney has a point there, Mr.
2 O'Brien. I am not sure Mr. Merrill has knowledge or would
3 have the authority to discuss what may be planned by
4 others.

5 Do you have response to that?

6 MR. O'BRIEN: I do, Mr. Brown. I think it is
7 remarkable that Mr. Maloney has opened this door wide open
8 on this issue of new vineyard development in Monterey
9 County, made it the cornerstone of whatever case he has put
10 on, and then is trying to slam it shut when I try to ask
11 questions that determine whether there is any basis for it.
12 I am not asking for specific deals at this point. My
13 question was whether he is aware of any specific plans. He
14 doesn't need to identify a client. He doesn't need to
15 identify a project at this point. But I think I am entitled
16 to an answer to the question whether there is specific plans
17 for acreage expansion in the Salinas Valley that he is aware
18 of.

19 H.O. BROWN: If you can substantiate the basis for
20 that which that claim is made, I request that you so
21 answer. If you can't, then that is the answer.

22 MR. MERRILL: I think I have given the answer. If you
23 check the record, you would see what I said: basically said
24 soil suitability, the climate, the demand with wineries that
25 are in Monterey County right now, that there is every reason

1 to believe that the growth will continue. And I think trend
2 analysis alone show you. Look how much it has grown to this
3 point, and there is no reason to suspect that it is not
4 going to continue. Beyond that I don't have any comment.

5 H.O. BROWN: All right.

6 We will break this afternoon at 4:00.

7 MR. O'BRIEN: Mr. Merrill, are you aware of any
8 discussions internally to San Bernabe Vineyard about the
9 idea of trying to transfer or transport water which San
10 Bernabe has conserved for use by others, either in the
11 Salinas Valley or elsewhere?

12 MR. MERRILL: I'm aware of no plans.

13 MR. O'BRIEN: Mr. Pyle, you performed an analysis which
14 was reflected in Exhibit 5 of the lands within the Salinas
15 Valley, in particular relating to the Soil Conservation
16 Service classification of land and also the slope of those
17 lands.

18 Do you recall that?

19 MR. PYLE: Yes, I do.

20 MR. O'BRIEN: Why did you choose this 0 to 15 percent
21 slope category in conducting your analysis?

22 MR. PYLE: I did that in conjunction with Mr. Maloney
23 in regards to some experience that he has had with grape
24 production in the past.

25 MR. O'BRIEN: When you say you did that in conjunction

1 with Mr. Maloney, did you do that at Mr. Maloney's
2 direction?

3 MR. PYLE: Yes.

4 MR. O'BRIEN: And what was your understanding as to the
5 significance of 0 to 15 percent slope category based on what
6 Mr. Maloney told you?

7 MR. PYLE: Well, it wasn't exclusively what Mr. Maloney
8 told me. It is my interpretation also that the -- that is
9 the range of slope in which vineyard can be successfully
10 planted and grown. Possibly greater than that amount, but
11 we cut it off at 15. I have seen them greater than 15, but
12 I don't know the economics of it as far as the
13 sustainability of that.

14 MR. O'BRIEN: Just so I understand your numbers, you
15 conclude in Exhibit 5 that the -- talking now about Page 2
16 of 2, Exhibit 5 with respect to the lands owned by Mr.
17 Maloney's client that there is approximately 6,193 acres of
18 land within this 0 to 15 percent slope area that have
19 suitable soil for vineyard cultivation.

20 Is that essentially accurate?

21 MR. PYLE: That is, although there is a little bit
22 confusion because we did not digitize all of the soils
23 within the Protestants' lands. That only refers to the
24 portion for which we did digitize soils.

25 So if we look at perhaps Exhibit 2 and 3 will help

1 clarify that that is only a portion of the Protestants'
2 lands that we have soils information digitized for.

3 MR. MALONEY: Mr. Brown, may I put down the exhibits so
4 everyone will know what they are talking about?

5 H.O. BROWN: Put down the exhibits?

6 MR. MALONEY: Making reference to.

7 H.O. BROWN: Show them those maps?

8 MR. MALONEY: Yes.

9 H.O. BROWN: Sure.

10 MR. MALONEY: This is Exhibit 2 that Mr. O'Brien made
11 reference to and this is Exhibit 3 that Mr. Pyle made
12 reference to.

13 MR. O'BRIEN: With respect to other lands in the
14 Salinas Valley, not just lands owned by Mr. Maloney's client
15 group, what is the number you came up with that represents
16 the acreage that is within the 0 to 15 percent slope area
17 and also suitable for vineyard cultivation from the soil
18 standpoint?

19 MR. PYLE: We only classified soils within that limited
20 area, so the remainder was strictly based on slope.

21 MR. O'BRIEN: Strictly based on slope, how many acres
22 throughout the valley would fall within this 0 to 15 percent
23 slope?

24 MR. PYLE: Approximately 323,000, 324,000.

25 MR. O'BRIEN: But that number does not take into

1 account which land within that 324,000 would have suitable
2 soils for vineyard cultivation purposes, correct?

3 MR. PYLE: Not all of them; only those that we had
4 soils digitized for, so about 28,000 of those.

5 MR. O'BRIEN: I am getting confused. 28,000 of those?

6 MR. PYLE: Are still within that 323-, 324-.

7 MR. O'BRIEN: And 28,000 represent what?

8 MR. PYLE: That represents the area within the
9 Protestants' lands for which we digitized soil information.
10 So it is also within the area that we determined the slope
11 for the entire basin. So it is a subset.

12 MR. O'BRIEN: I will ask the question again just so the
13 record is clear.

14 You didn't attempt to determine on a Salinas Valleywide
15 basis how many acres of land are both, number one, within
16 the 0 to 15 percent slope parameter and, number two, have a
17 soil classification that indicates that those lands would be
18 adequate for vineyard cultivation? You did not come up with
19 that number, correct?

20 MR. PYLE: Correct.

21 MR. O'BRIEN: So we have no basis to determine, based
22 on your analysis, whether Mr. Merrill's number, the a
23 hundred to 110,000 acre number, is consistent with your
24 analysis at this point in time, correct?

25 MR. PYLE: It would be difficult. I mean, you could

1 draw proportions from the lands. We do have soils for that,
2 but that would be stretching it.

3 MR. O'BRIEN: You didn't attempt to verify the accuracy
4 of his numbers?

5 MR. PYLE: No.

6 MR. O'BRIEN: The lands that you identified within Mr.
7 Maloney's client group that are suitable for vineyard
8 cultivation, did you attempt to determine whether any of
9 those lands have an adequate water supply within the aquifer
10 that underlies those lands.

11 MR. PYLE: No. We did in some of the lands determine
12 the extent of the water-bearing material up through the Paso
13 Robles formation.

14 MR. MALONEY: Objection. I am concerned we may be
15 getting -- I am objecting to the whole line of questions
16 about water supply in connection with individual land
17 ownerships. We are getting into the whole issue of, quote,
18 water rights. I think this should all be considered, but we
19 are not. Seems to me we are going too far afield of the
20 Hearing Officer's order.

21 H.O. BROWN: Mr. O'Brien.

22 MR. O'BRIEN: I wasn't asking about water rights. I
23 was asking water supply. They claim there has been injury.
24 I am trying to understand what their water supply is.

25 H.O. BROWN: That is different from water rights. If

1 you know the answer, go ahead.

2 MR. PYLE: Actually don't really see the distinction in
3 water rights myself, because if these lands have not yet
4 been developed, but they're within an area contiguous to the
5 river, then they are riparian and they would have water
6 supply even if not necessarily overlying a favorable area
7 for production of wells.

8 MR. MALONEY: Your Honor, the problem with this line of
9 questioning --

10 MR. O'BRIEN: Excuse me. I would like to move to
11 strike that answer. The question went to the question of
12 supply underlying the lands, and I got an answer relating
13 to his opinion about riparian rights, which I think is
14 completely nonresponsive to the question. I move to strike.

15 H.O. BROWN: Mr. Maloney.

16 MR. MALONEY: Your Honor, he didn't give any opinion on
17 riparian rights. He said waters -- the land was riparian to
18 the river. Riparian means all sorts of things. He doesn't
19 know anything about riparian rights. He is an engineer. He
20 has no knowledge of what riparian rights are.

21 If we are going to get into water rights here, I let
22 some testimony go on earlier about storage in reservoirs
23 over seasons and the threat, this veil threat that the
24 County is trying to make and report to the State Board
25 because you are storing water in a reservoir. I was not

1 allowed to put on evidence about pre-1914 rights which might
2 give us a right to store water, instead we have to deal with
3 threats.

4 We cannot -- if we are going to view the water rights,
5 let's get to water rights. As I have said from the
6 beginning, I don't think it is necessary that we get into
7 water rights.

8 H.O. BROWN: I will rule on this, Mr. Maloney.

9 It is now ten to four. What I will do is rule on this
10 first thing in the morning.

11 Esther, I would like for you to read the response, the
12 question at issue and Mr. Pyle's response back and then I
13 will rule on that in the morning.

14 Before we break is there anything else that needs to be
15 brought before this hearing this afternoon?

16 MR. MALONEY: Yes, your Honor. We had clients that are
17 very busy people come to this hearing today just out of
18 order at the request of the Agency. The problem we have is
19 we extended the courtesies to the Agency last week and let
20 them have a person come out of order as one of the most
21 important witnesses. Our case in chief would have been much
22 better if we could have put him on in the case in chief or
23 as a rebuttal witness in the manner he was put on.

24 H.O. BROWN: What is the issue?

25 MR. MALONEY: What can we do about these witnesses?

1 It's terribly inconvenient for them to come back tomorrow.
2 We had them ready to go at the beginning of this thing, but
3 the Agency objected to the panel going on because it was
4 cross-examination in nature.

5 H.O. BROWN: We have already discussed that issue, Mr.
6 Maloney, and I have ruled on it.

7 Mr. Bezerra, do you have an issue?

8 MR. BEZERRA: I would like to clarify what has exactly
9 occurred with Exhibit SVP-1 and what lines are in and what
10 lines are out. It is important to me and my clients for
11 what cross-examination we may need to do. I think it is
12 also very nice to have the record be absolutely clear as to
13 what that exhibit means and does not mean.

14 H.O. BROWN: I was under the impression, Mr. Bezerra,
15 that we have already done that.

16 MR. MALONEY: As far as I am concerned, we have done
17 that.

18 MR. BEZERRA: It is that that exhibit goes only to
19 Protestants' claim.

20 H.O. BROWN: I am sorry, I didn't hear you.

21 MR. BEZERRA: My understanding is that that exhibit is
22 relevant only to the green portions which are Protestants'
23 land; is that correct or incorrect?

24 H.O. BROWN: What is the --

25 MS. KATZ: I think that is correct.

1 MR. BEZERRA: Is that correct?
2 I appreciate the clarification.
3 MR. MALONEY: That is not my understanding. My
4 understanding is that the exhibit isn't in at all. I made
5 it as an offer of proof. I have to substitute a new exhibit
6 with --
7 MS. KATZ: You are right.
8 MR. MALONEY: I am right? Excuse me, I am sorry.
9 H.O. BROWN: You want to stop on that one tonight?
10 Mr. Donlan.
11 MR. BEZERRA: That exhibit is not in evidence. It is
12 in the record; is that correct?
13 Okay. Thank you very much. I very much appreciate
14 that.
15 H.O. BROWN: Mr. Donlan.
16 MR. DONLAN: I was just wondering if we can get copies
17 of Exhibit, the colored maps, 2, 3 and 4. Is that correct?
18 MR. MALONEY: Yes.
19 Would you like them in that size?
20 MR. DONLAN: Sure.
21 H.O. BROWN: How many do we need of the large size?
22 One. Martha, Ms. Lennihan, and is that three? Let's
23 see a show of hands.
24 How many of the large size?
25 One, two, three, four and one for use is five. Make

1 six.

2 MR. MALONEY: Would they like copies of the exhibit
3 that has been not accepted as well?

4 H.O. BROWN: I don't think they do. Make five copies
5 of it.

6 Mr. O'Brien, do you have something?

7 MR. O'BRIEN: I thought about handling this off the
8 record, but it might be better to do it on the record. I
9 have no interest or desire in inconveniencing Mr. Maloney's
10 clients who I realize made arrangements to be here today.
11 What I am going to propose of his client representatives,
12 Mr. Petrovic, that I would like to ask a few questions of as
13 part of our rebuttal case.

14 If Mr. Maloney would stipulate that the depositions
15 that I took earlier in the year of Mr. Indelicato, Mr.
16 Orradre and Ms. Duflock could be simply submitted, portions
17 of those depositions are already in the record. But if I
18 could simply submit those depositions as exhibits, as part
19 of my rebuttal case, then I don't need to have them here
20 live in person, and hopefully that alleviates his concern.

21 H.O. BROWN: Would that satisfy all the other parties
22 with that?

23 MR. VIRSIK: Subject to just one caveat, that we amend
24 the depositions to conform to the later -- as part of the
25 lawsuit process. There were several corrections to the text

1 of the depositions. Just so long as -- they were minor.
2 But just so long as we have corrected versions of the
3 depositions in the record. That is the only caveat.

4 H.O. BROWN: Mr. Maloney and Mr. Virsik stipulate to
5 that.

6 Is that agreeable to the other parties?

7 MS. LENNIHAN: No objection, Mr. Brown.

8 H.O. BROWN: Thank you, Ms. Lennihan.

9 Mr. Maloney, is that okay with you?

10 MR. MALONEY: Mr. Virsik spoke for me on that.

11 H.O. BROWN: That takes care of your witnesses.

12 You may be excused, then.

13 MR. O'BRIEN: Yes, except Mr. Petrovic.

14 MR. MALONEY: I thought you were going to accept his
15 deposition as well.

16 MR. O'BRIEN: He is the one witness that I would like
17 to ask some questions.

18 H.O. BROWN: Mr. Petrovic, you will have to come back
19 tomorrow.

20 MR. MALONEY: We have other witnesses that we need for
21 cross-examination. Can we plan on doing this tomorrow for
22 rebuttal or continue longer because of so-called shock of
23 the evidence?

24 H.O. BROWN: Hopefully we can get it all done
25 tomorrow. I said that before, but let's see if we can get

1 it done. We have one more day scheduled for this. If we go
2 beyond that, we will have to schedule some more time.

3 Anything else?

4 MR. MALONEY: We have one more witness we wanted to
5 bring on today. Let's see if he is available tomorrow.

6 MR. O'BRIEN: Who is that?

7 MR. MALONEY: Rebuttal witnesses.

8 MR. O'BRIEN: Who is it?

9 MR. MALONEY: Dr. Hornbeck and Mr. Indelicato.

10 MR. O'BRIEN: We will deal with Mr. Hornbeck tomorrow.

11 H.O. BROWN: Mr. Hornbeck.

12 MR. HORNBECK: I can't be here tomorrow. I could be
13 Wednesday, Thursday or Saturday or Sunday, but not tomorrow.

14 H.O. BROWN: We will have to reschedule time when you
15 could be here, then.

16 MR. MALONEY: Thank you, your Honor.

17 Mr. Petrovic has the same problem tomorrow.

18 H.O. BROWN: We have Wednesday scheduled. That begs
19 the question.

20 We'll see you Wednesday, then. Wednesday morning at
21 9:00. And continue in the morning with the completion of
22 this panel and start rebuttal.

23 MR. MALONEY: How much longer will your questions be?

24 MR. O'BRIEN: Twenty minutes.

25 MR. MALONEY: Could you do it on Wednesday as well?

1 H.O. BROWN: Only half a day that we have scheduled for
2 Wednesday. So let's don't load up Wednesday. Get
3 everything completed tomorrow if you can. We have one
4 witness that will show up on Wednesday and --

5 MS. KATZ: Two.

6 H.O. BROWN: Two.

7 MS. KATZ: Mr. Petrovic and Dr. Hornbeck.

8 H.O. BROWN: She can't hear you, and identify
9 yourself. MR. PETROVIC: My name is Bill Petrovic.
10 And Wednesday is a terrible day. I had something already
11 scheduled and actually tomorrow is a bad day also. Can we
12 do it today?

13 H.O. BROWN: These days are scheduled in advance and to
14 the extent that we can accommodate parties we will. Other
15 than that, you're required and requested to have your
16 witnesses here at the appointed hour. I suggest that the
17 attorneys get with your witnesses and you work it out. We
18 have Tuesday and Wednesday to resolve this, and that is the
19 order.

20 We stand adjourned for today.

21 MR. MALONEY: Thank you, your Honor.

22 (Hearing adjourned at 4:15)

23 ---oOo---

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